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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 1041.

THE UNITED STATES EX REL: JAMES K. McLEAN, PLAINTIFF IN ERROR,

vs.

WILLIAM F. VILAS, POSTMASTER GENERAL.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED SEPTEMBER 9, 1887.

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1 *Petition for Mandamus. Filed Aug.* 4, 1886.

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA *ex rel.* J. K. McLEAN *vs.* WM. F. VILAS, Postmaster General. } At Law. No. 27092.

To the honorable judges of the supreme court of said District:

Your relator, J. K. McLean, a citizen of the State of Kansas, residing at Florence, in said State, respectfully shows to your honors—

That your relator was, on or prior to April 14, 1871, commissioned a postmaster of the fifth class by the Postmaster General, at Florence, Kansas, and that he executed bonds with accepted sureties for the full and faithful performance of all his duties and obligations as such postmaster under his said commission.

2 Your relator, J. K. McLean, further shows that he entered upon the discharge of the duties of his office on the 14th of April, 1871, and continued to discharge fully all the duties of said office and to defray all the expenses of said office, including cost of fuel, lights, and clerk hire and rent of office and construction of furniture and letter boxes, up to and including June 30, 1872, and made full returns of business and receipts of said office on the last day of each quarter to the officer designated by law to receive said returns.

Your relator, J. K. McLean, further shows that upon the returns made on the 30th of June, 1871, he was allowed and paid a salary of $1.48, and that if paid in commissions upon said returns, under the act of 1854, he would have received $89.12.

Your relator, J. K. McLean, further shows that upon all the returns made by him between July 1, 1871, and July 1, 1872,

3 he was allowed and paid a salary of $7, and that if he had been paid in commissions upon said returns, under the act of 1854, he would have received $568.64.

Your relator, J. K. McLean, further shows that the Postmaster General refused to readjust his salary as such postmaster during his said term of service, and that he sued the United States in the Court of Claims for his unadjusted salary, and that his claim failed by reason of the decision of the U. S. Supreme Court that the Postmaster General's readjustment of his salary must be made before he could recover.

Your relator, J. K. McLean, further shows that he then applied to Congress for relief, and that Congress, for his relief and the relief of other postmasters, on the 3rd of March, 1883, passed the following act:

"Chap. 119. An act authorizing and directing the Postmaster General to readjust the salaries of certain postmasters in ac-
4 cordance with the provision of section eight of the act of June twelfth, eighteen hundred and sixty-six.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Postmaster General be, and he is hereby, authorized and directed to readjust the salaries of all postmasters and late postmasters of the third, fourth, and fifth classes under the classification provided for in the act of July first, eighteen hundred and sixty-four, whose salaries have not heretofore been readjusted under the terms of section eight of the act of June twelfth, eighteen hundred and sixty-six, who, under sworn returns of receipts and business for readjustment of salary to the Postmaster General, the First Assistant Postmaster General, or the Third Assistant Postmaster General, or who made quarterly returns in conformity to the then existing laws and regulations showing
5 that the salary allowed was ten per centum less than it would have been upon the basis of commissions under the act of eighteen hundred and fifty-four, such readjustments to be made in accordance with the mode presented in section eight of the act of June twelfth, eighteen hundred and sixty-six, and to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business or quarterly returns were made: Provided, That every readjustment of salary under this act shall be upon a written application, signed by the postmaster or late postmaster or legal representative entitled to said readjustment, and that such payment made shall be by warrant or check on the Treasurer or some assistant treasurer of the United States, made payable to the order of said applicant, and forwarded by mail
6 to him at the post office within whose delivery he resides, and which address shall be set forth in the application above provided for.

"Approved March 3, 1883."

Your relator, J. K. McLean, further shows that, in full compliance with the requirements of said act, he has, in writing, presented his application for readjustment of his salary as such postmaster at Florence, Kansas, for the term of his service as herein set forth, to Wm. F. Vilas, Postmaster General, and that the said Wm. F. Vilas, Postmaster General, has refused to readjust his salary as postmaster at Florence, Kansas, for the term of his service, between April 14, 1871, and July 1, 1872, and has refused to readjust his salary as such postmaster for any part of the said term of service.

Your relator, J. K. McLean, therefore prays that a writ of peremptory mandamus may issue from this honorable court, an
7 under its seal, directed to Wm. F. Vilas, Postmaster Genera commanding him that he readjust the salary of the relato as postmaster at Florence, Kansas, for and during his official tern of service, from April 14, 1871, to July 1, 1872, and that he shoulc

be required to appear before this honorable court, on a day named by your honors, to show cause why the said writ should not issue.

J. K. McLEAN,
By HARVEY SPALDING,
His Attorney.

DISTRICT OF COLUMBIA, *ss:*

Harvey Spalding, being duly sworn, deposes and says that he is the attorney of the above-named relator, and that the facts as stated in the above petition are true.

HARVEY SPALDING.

Subscribed and sworn to before me this fourth day of August, eighteen hundred and eighty-six.

[SEAL.] JNO. C. PEDRICK,
Notary Public.

8 *Rule to Show Cause.*

In the Supreme Court of the District of Columbia.

THE UNITED STATES *ex rel.* J. K. McLEAN, Petitioner,
vs.
WM. F. VILAS, Postmaster General. } Law. No. 27092.

On reading the petition for the writ of mandamus in the above-entitled cause and upon considering the same it is, this 6th day of August, 1886, ordered that the defendant show cause, on the first Monday of October next, at 10 o'clock a. m., before the court in general term, why the said writ of mandamus should not be issued as prayed, and that a copy of this order be served on the defendant on or before the 20th day of August instant.

By order of the court:

WM. M. MERRICK, *A. J.*

Marshal's Return.

Served copy application & rule to show cause on Wm. F. Vilas. Postmaster General, August 7, 1886.

A. A. WILSON, *Marshal.*

9 *Motion to Set Aside Rule to Show Cause. Filed Oct.* 4, 1886.

In the Supreme Court of the District of Columbia.

J. K. McLEAN
v.
WM. F. VILAS. } Law. 27092.

Now, on this fourth day of October, 1886, comes the respondent and moves the court to quash the petition and set aside and dis-

charge the rule to show cause why a mandamus should not be issued as prayed, for the following reasons:

I. The said petition does not disclose such a case as should entitle the petitioner to the relief prayed.

II. The said petition does not show that the petitioner was entitled to a readjustment of salary at the time he claims he was so entitled to such readjustment.

III. It appears that no application was made by petitioner for a readjustment of salary in apt and proper time to entitle him to the same.

WM. F. VILAS,
Postmaster General.

ROBERT A. HOWARD,
Ass't Att'y Gen. U. S., of Counsel for P. M. Gen.

10 *Motion for Leave to Substitute Amended Petition. Filed Oct.* 18, 1886.

Supreme Court of the District of Columbia. Oct. 18th, 1886.

UNITED STATES, &c., J. K. McLEAN
v.
WILLIAM F. VILAS, Postmaster General. } No. 27092.

Now comes the relator, by his attorneys, Harvey Spalding and S. F. Philips, and moves the court to be allowed to substitute for the original petition in the above case an amended petition, being that endorsed filed October 18th, 1886, suggesting that such amended petition is merely a change in form from the original.

H. S. SPALDING,
S. F. PHILIPS,
For Relator.

11 *Amended Petition for Mandamus. Filed Oct. 18th,* 1886.

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA *ex rel.* J. K. McLEAN
vs.
WM. F. VILAS, Postmaster General. } At Law. No. 27092.

To the honorable judges of the supreme court of said District:

The relator, J. K. McLean, a citizen of the State of Kansas, residing at Florence, in said State, respectfully shows to your honors—

That on or prior to April 14, 1871, he was duly commissioned a postmaster of the fifth class at Florence, Kansas, and that thereupon, upon said day, he was duly qualified therefor by giving bond and taking oath, and immediately entered upon a discharge of the duties of said office.

12 He further shows that he continued regularly and fully to discharge all the duties of said office up to and including June 30, 1872, and amongst these duties made full returns of the business and receipts of the same on the last day of each quarter to the auditor for the Post-Office Department. Accordingly, that upon June 30, 1871, for the fractional quarter which then expired, he returned and paid over to the United States $161.12 for postages by him received, upon which, by the act of 1854, he would have been entitled to the commissions at 60 per cent. upon $85.71 (the quarter being fractional) and 50 per cent. upon the remainder, $75.41, or in all for compensation to $89.12.

In the same way, that upon September 30, 1871, for the quarter then ending, he returned and paid over for postages $270.19, and for box rents $19.20, upon which postages, by the act of 1854, he would have been entitled to commissions at 60 per cent. upon
13 the first $100 and 50 per cent. upon the remainder, as well also to the whole of the box rents, or in all for compensation to $164.29.

So, also, upon December 31, 1871, for the quarter then ending, he returned and paid over for postages $212.06, and for box rents $20.75; the compensation upon which, calculated as above, would have been $136.73.

And, again, upon March 31, 1872, for the quarter then ending, he returned and paid over for postages $218.37, and for box rents $15.75; the compensation upon which, calculated as above, would have been $134.93.

And, lastly, upon June 30, 1872, for the quarter then ending, he returned and paid over for postages $225.52, and for box rents $14.50; the compensation upon which, calculated as above, would have been $137.26.

The relator further shows that upon the returns made by him for the quarter ending June 30, 1871, he was allowed for com-
14 pensation $1.48, and for each of the four quarters which expired between July 1, 1871, and July 1, 1872, he was allowed and paid for compensation $1.75 or for that year in all $7.00.

Also that the Postmaster General refused to readjust his salary as such postmaster during his said term of service, and that thereupon he sued the United States in the Court of Claims for his unadjusted salary, and failed to recover for the reason that such "readjustment" was a necessary preliminary to a suit for the money. (95 U. S., 750.)

Also that he then applied to Congress for relief, and that thereupon the act of 1883, ch. 119 (March 3), was enacted entitled "An act authorizing and directing the Postmaster General to readjust the salaries of certain postmasters in accordance with the provisions of section eight of the act of June twelfth, eighteen hundred and sixty-six."

15 The relator further shows that about the 14 of April, 1883, in compliance with the requirement of said act, he presented an application (signed by himself and setting forth the address of the post office at which he resided) for a readjustment of his salary

as such postmaster for the term of service hereinbefore set forth to W. Q. Gresham, then Postmaster General, and that upon the coming into office of the defendant, W. F. Vilas, the present Postmaster General, said application was soon and repeatedly called to his attention by the attorney of said relator, and that in March, 1886, the said W. F. Vilas communicated to him a refusal to readjust the same in all or for any part thereof.

The relator therefore prays that a writ of mandamus may issue from this honorable court directed to William F. Vilas, Postmaster
16 General, commanding him to readjust the salary of the relator as postmaster aforesaid for and during such term of service or otherwise to appear before this honorable court, on a day named by your honors, to show cause why the said writ should not issue.

J. R. McLEAN,
By HARVEY SPALDING,
His Attorney.

DISTRICT OF COLUMBIA, *ss:*

Harvey Spalding, being duly sworn, deposes and says that he is the attorney of the above-named relator and that the facts as stated in the above petition are true.

HARVEY SPALDING.

Subscribed and sworn to before me this 13th day of October, eighteen hundred and eighty-six.

[SEAL.] JOHN J. LINNEY,
Notary Public.

17 *Answer of Respondent. Filed Nov.* 10, 1886.

In the Supreme Court of the District of Columbia.

THE UNITED STATES *ex rel.* J. K. McLEAN
vs.
WILLIAM F. VILAS, Postmaster General. } At Law. No. 27092.

Now comes the respondent herein, by the Attorney General, his counsel in this behalf, and, for cause and reason why the writ of mandamus prayed for herein should not issue as prayed, respectfully showeth unto this honorable court that he hath been served with notice of an order or rule from this honorable court requiring him to show cause why a writ of mandamus should not be issued from the said court directed to him, as Postmaster General of the United States, upon the petition of the said J. K. McLean, relator herein,
18 commanding the respondent that he readjust the salary of the relator *at* postmaster at Florence, Kansas, for and during his official term of service, from April 4th, 1871, to July 1st, 1872, in accordance with the provisions of the act of Congress approved March 3, 1883, entitled "An act authorizing and directing

the Postmaster General to readjust the salaries of certain postmasters in accordance with the provisions of section eight of the act of June 12, 1886."

The undersigned respondent considers it his duty, in the first place, to protest against the jurisdiction of this honorable court invoked on this occasion for the following reasons:

First. Because, as Postmaster General of the United States, he is not subject in the discharge of the duties of his office by the Constitution and laws of the United States to the control, supervision, and direction of the said court.

Second. Because such jurisdiction in this court would, if
19 assumed, operate as such an interference in the discharge of the official duties of the undersigned, as such officer, as to make it impossible for him to perform them as required and intended and directed by the acts of Congress, and would transfer to the said court the discharge of said duties, the disbursement of public moneys and property by law for specific purposes, great embarrassment to the postal service, and great wrong and injustice to other persons entitled to receive moneys from the postal funds and revenues and appropriations made by law to defray the expenses of the postal service; and

Third. Because such a jurisdiction in a court would make the United States suable in that court, and subject the money of the United States in the Treasury of the United States to be taken therefrom by the judgments of said court; and

Fourth. Because such a jurisdiction requires the adjustment
20 and allowance of a claim for which no appropriation has been made by law; and

Fifth. Because the writ of mandamus prayed in this action seeks to compel and require of this respondent to violate the expressed commands and requirements of Congress contained in the act approved August 4th, 1886, making appropriations to supply deficiencies, etc., and commonly known as the general deficiency act; and

Sixth. Because the said writ, as prayed for, will require of the respondent to do not only a ministerial act, but an act involving and requiring the exercise of executive judgment and discretion; and

Seventh. Because that if said respondent proceeds to readjust said salary under the mandate of this court he will be required to readjust said salary under the rule of readjustment prescribed in said act of August 4th, 1886, and will thereby be required to find and determine, as has been heretofore found and determined by his
21 predecessor in office, that said relator is entitled to no readjustment or increased allotment for the period for which he claims.

For these and other reasons, which he trusts will be obvious on further consideration to the court, and for further reasons hereinafter set forth, he respectfully objects to the jurisdiction assumed in this case and now proceeds under such protest to show cause why the mandamus prayed for should not be issued.

The respondent supposes it to be true that the relator was postmaster at Florence, Kansas, from April 14, 1871, to and including

June 30th, 1872, as stated in said petition, and that he was paid his salary, as stated in the said petition filed herein and of which a copy has been served upon the respondent.

He further shows, upon information and belief, that the said petitioner is not now and never was or has been entitled to a re-
22 adjustment of salary for the period aforesaid for the reason that no quarterly returns of the receipts and business of the post office aforesaid were made for that period and anterior periods whereby it was made to appear to the Post Office Department that he was lawfully entitled to such readjustment or further allowance of salary for the period aforesaid, and that by reason of the fact that no sufficient returns having been made at the end of and for each quarter, nor for a succeeding number of preceding quarters, the said petitioner, J. K. McLean, never became entitled to the readjustment and further allowance of salary under the acts of July 1st, 1864 (13 Stat., p. 335), nor under the provisions of section eight of the act of June 12, 1866 (14 Stat., p. 60) and that, as the respondent is informed and believes, said petitioner's salary was not increased
23 by further allowance for that period or for any part thereof, because and for the reason that the Postmaster General then in office found and determined that for lack of quarterly returns duly rendered for a sufficient number of quarters and for each quarter and other necessary data required by law it was not not made to appear that said petitioner was entitled to the readjustment of his salary for said period, and that the same could not lawfully be made.

The respondent, further answering, admits that said petitioner heretofore brought an action against the United States to recover a sum of money as salary for the period aforesaid, and that in said action it was declared and decided by the Supreme Court of the United States, as appears from the report of said decision in the 96th volume of United States Reports, page 750, to which action
24 the petitioner refers in his petition herein, that upon the facts proved, found, and established in said action the acts of Congress above referred to gave to said petitioner no right to any greater salary between April 14, 1871, and July 1st, 1872, than that which was fixed at the time of said appointment and that which he had been paid and had received.

And the respondent further shows that after the passage of the act of 1883, referred to and recited at length in the said petition, its proper construction and true intendment became a question of some difficulty to the Post-Office Department, and the then Postmaster General, Hon. W. Q. Gresham, gave the subject careful consideration and stated his views thereon in a letter addressed to the First Assistant Postmaster General, of date June 9, 1883, of which a copy (printed) will be found in H. R. Report No. 2376 of the 49th Con-
25 gress, a copy of which report is hereto annexed and said letter therein printed made a part of this return. Mr. Gresham also requested the views of the honorable the Attorney General, Benjamin H. Brewster, as to its interpretation and the proper method of complying with its requirements. In compliance with

such request the Attorney General gave an opinion, of date February 13, 1884, a copy of which will be found in H. R. Report No. 2376 of the 49th Congress, a copy of which report is hereto annexed and said opinion made a part of this return or answer and filed herewith. On the 14th of June, 1884, the said Attorney General gave a further supplemental opinion to construct some misconstruction or misunderstanding as to his former opinion, a copy of which in like connection and manner is also filed. The rule of readjustment under said act was thus stated by the Attorney General:

"The readjustment must, therefore, take effect prospectively,
26 and as there is no provision for assigning a salary less than two years the Postmaster General must assign him a salary for that period in advance; but he cannot determine its amount, under the act of 1864, from a single return, for it depends upon the full average from eight consecutive quarterly returns." (See page 11, accompanying report.)

Under the advice of the said Attorney General and after due consideration of the subject himself the said Postmaster General, Gresham, adopted a rule of readjustment, which is described and referred to in the act of August 4, 1886, above referred to, under and in pursuance of said several acts of Congress, by which claims of large number of postmasters and late postmasters who occupied said offices during the period from July 1st, 1864, until July 1st, 1874,
27 have been reviewed and readjusted and were found entitled, under the terms of said several acts, to a further allowance of salary. The same have been allowed, as the respondent is advised, in conformity with the spirit and purpose of said act, and were certified to Congress for appropriation by the Secretary of the Treasury and appropriations made for their payment as follows:

By the act of July 7, 1884 (23 Stat. at Large, p. 248), the sum of $45,213.66, and by the act of March 3, 1885, $178,481.23, the same being appropriated upon lists of claims allowed prior to the incumbency of the respondent in his office, and by the act of August 4th, 1886, the sum of $380,209.46; that said relator, as appears by the records and files of the Post-Office Department, made his application for readjustment of his salary and further allowance therefor on or about the 14th day of April, 1883, and before the incumbency of the respondent in the office of Postmaster General. The applica-
28 tion of the said relator was examined and reviewed for readjustment, and it was found and determined by the then existing Postmaster General, upon such examination and consideration and application of the law to the facts in this case, that he was entitled to no further allowance or any increase of salary for the said period or any part thereof, and the said relator was notified by the then Postmaster General or by his authority that nothing was found to be due him upon such review for such readjustment.

And that it was so found and determined, as the respondent is informed and believes, for the reasons, among others, substantially as found by the supreme court in the action aforesaid and under said rule of readjustment, and your petitioner respectfully submits that said claim having been passed upon and finally decided by his pred-

ecessor in office it never became the official duty and is not now
29 the duty of the respondent to review or overrule such former decision, and he respectfully submits that it is not competent for this honorable court, by its writ or mandate, to compel him to do so.

He further states that no other application has been made to him to readjust said salary than the demand of said relator by his attorney; that this respondent, as Postmaster General, shall reopen, review, reconsider, revise, and overrule the ruling and decision of his predecessor in office, disallowing said claim and finding and determining that nothing is due thereon under said acts of Congress.

And the respondent further shows that, by reason of said rule of readjustment adopted upon the advice aforesaid and pursued in the Department, the said relators and others, whose claims have been disallowed, besought Congress at the sessions of the 49th Con-
30 gress to interfere and compel the Department to adopt their views and construction of the statute, and to depart from the rule of administration pursued as aforesaid and reconsider their claims; and that the said Congress denied their petition and, instead of granting the same, enacted in the act approved August 4, 1886, making appropriations to supply deficiencies, etc., and in particular an appropriation to pay the claims which had been readjusted and allowed under the requirements of said act of 1883 during the preceding fiscal year, that the method of reviewing and readjusting the salaries of postmasters and late postmasters of the third, fourth, and fifth classes under the classification of the act of July 1, 1864, during the period between July 1, 1864, and July 1, 1874, which has been practiced in the Post-Office Department since the act of March 3, 1883, entitled "An act authorizing
31 and directing the Postmaster General to readjust the salaries of certain postmasters in accordance with section eight of the act of June 12, 1886," by which all reviews and readjustments have been made prospectively for the biennial periods provided for in the said act of July 1, 1864, upon the basis of the quarterly returns of postmasters during the preceding biennial periods, respectively, whenever the salary actually paid was ten per centum less in amount than such salary should have been if readjusted correctly upon such returns by computing what the commissions upon the same would have been under the act of June 22, 1854, and averaging the amount thereof annually, as directed by the act of July 1, 1864, for fixing salaries, was approved and ratified as a correct administration of the aforesaid act of March 3, 1883, and of all other acts appli-
32 cable thereto; and that the several readjustments which have been made are ratified as a correct disposition of the several claims which have been considered and disposed of, and for which this appropriation is made; and the several persons to whom amounts have been respectively found due were declared the rightful persons entitled to the same and such amounts to be the full sums due upon any and all such claims.

And that all claims in excess thereof and all other claims for readjustment which have been examined and found by the proper

officers of the Post-Office Department not entitled to readjustment are disallowed and barred.

And, further, that any and every different method of readjustment of salaries of such postmasters and late postmasters during the period between July 1, 1864, and July 1, 1874, than was therein approved was thereby prohibited.

33 The respondent further shows that the claim of the said relator for readjustment of salary for the period aforesaid, to wit, from April 14, 1871, to July 1, 1872, was and is one of the claims which had been examined and found by the proper officers of the Post-Office Department not entitled to readjustment within such rule of administration, and was by said act declared disallowed and barred; and that the respondent is prohibited by the said act from allowing the same or from readjusting the same according to any other rule than the rule by which it was found that he was entitled to no increase of compensation; and it was further enacted that no suit or action shall be maintainable in any court against any officer of the United States by reason of his action in reviewing or refusing to review or allowing or disallowing any application for readjustment of any such salary.

34 That by said act the respondent is expressly prohibited in taking further action in respect to such claim which the petitioner now seeks to compel him to do by a mandate of this honorable court.

Your respondent further shows that by this proceeding the relator seeks to compel, under the act of 1883, the readjust- and payment of an increased amount of salary, for which no appropriation has ever been made by law, and after Congress has expressly refused to make an appropriation for any such claim; and the respondent respectfully submits that it is not competent for this court to issue its writ of mandamus in such case.

The respondent attaches hereto as part of this return certified copies of the following papers and copies from the files of the Department, viz:

Exhibit "A."—A memorandum prepared in the office of the
35 First Assistant Postmaster General, giving statement of the claim of the said J. K. McLean and the action thereon.

Exhibit "B."—A brief of said claim, called a "jacket," showing the computations for determining the said McLean's right to a salary from July 1st, 1872, to July 1st, 1874.

Exhibit "C."—Statement of the quarterly receipts for the quarters between July 1st, 1870, and June 30, 1872.

Exhibit "D."—Copy of jacket in said case, on which was endorsed the review of salary for the biennial period from July 1st, 1870, to June 30, 1872. This review was prepared in 1884, prior to October 4th of that year, and upon it it was determined by the then head of the Department that the said McLean was entitled to no increase of salary under the rule of readjustment of salary as adopted and practiced in such readjustments.

Exhibit "E."—Statement of the quarterly receipts for the last-

ecessor in office it never became the official duty and is not now
29 the duty of the respondent to review or overrule such former decision, and he respectfully submits that it is not competent for this honorable court, by its writ or mandate, to compel him to do so.

He further states that no other application has been made to him to readjust said salary than the demand of said relator by his attorney; that this respondent, as Postmaster General, shall reopen, review, reconsider, revise, and overrule the ruling and decision of his predecessor in office, disallowing said claim and finding and determining that nothing is due thereon under said acts of Congress.

And the respondent further shows that, by reason of said rule of readjustment adopted upon the advice aforesaid and pursued in the Department, the said relators and others, whose claims have been disallowed, besought Congress at the sessions of the 49th Con-
30 gress to interfere and compel the Department to adopt their views and construction of the statute, and to depart from the rule of administration pursued as aforesaid and reconsider their claims; and that the said Congress denied their petition and, instead of granting the same, enacted in the act approved August 4, 1886, making appropriations to supply deficiencies, etc., and in particular an appropriation to pay the claims which had been readjusted and allowed under the requirements of said act of 1883 during the preceding fiscal year, that the method of reviewing and readjusting the salaries of postmasters and late postmasters of the third, fourth, and fifth classes under the classification of the act of July 1, 1864, during the period between July 1, 1864, and July 1, 1874, which has been practiced in the Post-Office Department since the act of March 3, 1883, entitled "An act authorizing
31 and directing the Postmaster General to readjust the salaries of certain postmasters in accordance with section eight of the act of June 12, 1886," by which all reviews and readjustments have been made prospectively for the biennial periods provided for in the said act of July 1, 1864, upon the basis of the quarterly returns of postmasters during the preceding biennial periods, respectively, whenever the salary actually paid was ten per centum less in amount than such salary should have been if readjusted correctly upon such returns by computing what the commissions upon the same would have been under the act of June 22, 1854, and averaging the amount thereof annually, as directed by the act of July 1, 1864, for fixing salaries, was approved and ratified as a correct administration of the aforesaid act of March 3, 1883, and of all other acts appli-
32 cable thereto; and that the several readjustments which have been made are ratified as a correct disposition of the several claims which have been considered and disposed of, and for which this appropriation is made; and the several persons to whom amounts have been respectively found due were declared the rightful persons entitled to the same and such amounts to be the full sums due upon any and all such claims.

And that all claims in excess thereof and all other claims for readjustment which have been examined and found by the proper

officers of the Post-Office Department not entitled to readjustment are disallowed and barred.

And, further, that any and every different method of readjustment of salaries of such postmasters and late postmasters during the period between July 1, 1864, and July 1, 1874, than was therein approved was thereby prohibited.

33 The respondent further shows that the claim of the said relator for readjustment of salary for the period aforesaid, to wit, from April 14, 1871, to July 1, 1872, was and is one of the claims which had been examined and found by the proper officers of the Post-Office Department not entitled to readjustment within such rule of administration, and was by said act declared disallowed and barred; and that the respondent is prohibited by the said act from allowing the same or from readjusting the same according to any other rule than the rule by which it was found that he was entitled to no increase of compensation; and it was further enacted that no suit or action shall be maintainable in any court against any officer of the United States by reason of his action in reviewing or refusing to review or allowing or disallowing any application for readjustment of any such salary.

34 That by said act the respondent is expressly prohibited in taking further action in respect to such claim which the petitioner now seeks to compel him to do by a mandate of this honorable court.

Your respondent further shows that by this proceeding the relator seeks to compel, under the act of 1883, the readjust- and payment of an increased amount of salary, for which no appropriation has ever been made by law, and after Congress has expressly refused to make an appropriation for any such claim; and the respondent respectfully submits that it is not competent for this court to issue its writ of mandamus in such case.

The respondent attaches hereto as part of this return certified copies of the following papers and copies from the files of the Department, viz:

35 Exhibit "A."—A memorandum prepared in the office of the First Assistant Postmaster General, giving statement of the claim of the said J. K. McLean and the action thereon.

Exhibit "B."—A brief of said claim, called a "jacket," showing the computations for determining the said McLean's right to a salary from July 1st, 1872, to July 1st, 1874.

Exhibit "C."—Statement of the quarterly receipts for the quarters between July 1st, 1870, and June 30, 1872.

Exhibit "D."—Copy of jacket in said case, on which was endorsed the review of salary for the biennial period from July 1st, 1870, to June 30, 1872. This review was prepared in 1884, prior to October 4th of that year, and upon it it was determined by the then head of the Department that the said McLean was entitled to no increase of salary under the rule of readjustment of salary as adopted and practiced in such readjustments.

Exhibit "E."—Statement of the quarterly receipts for the last-

named period, showing the returns to have been found to be
36 incomplete and nothing due upon such readjustment, which said statement was prepared in 1884, prior to October 4th of that year.

Exhibit "F."—Power of attorney executed by said McLean to Harvey Spalding in 1872.

Exhibit "G."—Copy of application of said McLean for readjustment of the salary of said McLean for his period of service from April 14, 1871, to July 1st, 1872, which application was filed April 14th, 1883, and reviewed and disallowed as aforesaid.

Exhibit "H."—Copy of application of said McLean for readjustment of salary as postmaster at Florence, Kans., from April 14, 1871, to July 1, 1874, which was received in 1884.

Exhibit "I."—An imperfect application, dated April 7th, 1883, signed by Harvey Spalding as legal representative.

Exhibit "K."—Notification of the Department, dated Oct.
37 2, 1884, that on readjustment from July 1st, 1872, to November 12, 1872, no additional amount is found due.

Exhibit "L."—Letter of Hon. S. R. Peters, M. C., asking of the auditor in regard to said claim. Same referred by indorsement to the First Assistant Postmaster General.

Exhibit "M."—Answer of the First Assistant Postmaster General, stating the decision of the Department that no additional amount could be allowed.

Exhibit "N."—Copy of the pretended demand for readjustment, of date March 4th, 1886, alleged in said petition and letter therein referred to. The same was accompanied by no application signed by the postmaster, claimant.

Exhibit "O."—Copy of the demand made by Harvey Spalding, of date August 4th, 1886, which was presented at the Department after the act of August 4th prohibiting the readjustment of claims except upon the rules therein prescribed, and prohibiting any consideration of the claims theretofore disallowed — had taken effect.
38 As to any other matter set forth in said petition herein, not particularly responded unto in this answer or return, the respondent denies the same and submits the issue to this honorable court.

All of which is respectfully submitted.

WM. F. VILAS,
Postmaster General,
By ROBERT A. HOWARD,
Ass't Att'y Gen.
E. E. BRYANT,
Ass't Att'y Gen., P. O. D.

DISTRICT OF COLUMBIA, *ss:*

Edwin E. Bryant, being first duly sworn, on oath deposes and says that he is the assistant attorney general of the Post Office Department, and that he appears as counsel in this action on behalf of the Postmaster General at his request, and by request also of the

Attorney General; and that the matters stated in the foregoing answer or return are true to the best of his knowledge and belief.

EDWIN E. BRYANT.

Sworn to and subscribed before me this 9th day of November, A. D. 1886.

[SEAL.] JAMES LAWRENSON,
Notary Public.

39 *Report of H. R. Committee on Salaries of Postmasters.*

At Law. 27092.

49TH CONGRESS, 1st *Session.* HOUSE OF REPRESENTATIVES. REPORT No. 2376.

Salaries of Postmasters.

May 11, 1886.—Referred to the House Calendar and ordered to be printed.

Mr. Merriman, from the Committee on the Post Office and Post Roads, submitted the following report (to accompany bill H. R. 6993).

The Committee on the Post Office and Post Roads, to whom were referred the resolution (H. Res. 86) and the bills (H. R. 6993 and H. R. 8250) explaining and amending the act of March 3, 1883, authorizing the Postmaster General to readjust the salaries of certain postmasters, respectfully submit the following report:

The bill 8250 is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the true intent and meaning of the act approved March third, eighteen hundred and eighty-three, entitled "An act authorizing and directing the Postmaster General to readjust the salaries of certain postmasters in accordance with the provision of section eight of the act of June twelfth, eighteen hundred and sixty-six," is hereby declared to be to entitle postmasters and late postmasters of the classes specified in said act to be paid the difference between the salary heretofore allowed and what they would have received as commissions under the act of eighteen hundred and fifty-four in all cases wherein it shall appear that the salary allowed was ten per centum or more less than such commissions.

The resolution (H. Res. 86) is in substantially the same terms as this bill.

The act of 1883, to which this bill relates, was intended to explain and make more definite the acts of July 1, 1864, and June 12, 1866, which prescribed the method by which the Postmaster General should readjust the salaries of postmasters of the third, fourth, and fifth classes.

The act of June 22, 1854, fixed the compensation of postmasters on the basis of commissions on the postage collected at their respective offices in each quarter of the year. These commissions

were 60 per cent. on any sum not exceeding $100; 50 per cent. on any sum over $100 and less than $400; 40 per cent. on any sum over $400 and less than $2,400; and 15 per cent. on all sums over $2,400.

Under this act the commissions were allowed upon each quarterly return.

The act of July 1, 1864, provided that postmasters should be paid a fixed salary instead of commissions on postage collected, and divided the post offices into five classes.

The offices were to be classified and the postmasters' salaries adjusted on the basis of the average annual sum received in those offices for the two consecutive years next preceding July 1, 1864.

The offices where the postmasters' compensation had averaged not less than $3,000 were assigned to the first class; those in which it had amounted to less than $3,000 but not less than $2,000 to the second class; and those in which it had averaged less than $2,000 and not less than $1,000 to the third class. The offices in which the postmasters' compensation had been under $1,000 and over $100 were assigned to the fourth class, and those whose compensation had been under $100 to the fifth class.

The second section of this act provided for the biennial system of readjustment of postmasters' salaries on the basis of the annual compensation for the two preceding years. It reads:

SEC 2. That the Postmaster General shall review once in two years, and in special cases, upon satisfactory representation, as much oftener as he may deem expedient, and readjust, on the basis of the preceding section, the salary assigned by him to any office; but any change made in such salary shall not take effect until the first day of the quarter next following such order, and all orders made assigning or changing salaries shall be made in writing and recorded in his journal, and notified to the auditor for the Post Office Department.

After this law had been in operation nearly two years its second section was amended by section 8 of the act of June 12, 1866, which added to it the following:

Provided, That when the quarterly returns of any postmaster of the third, fourth, and fifth class show that the salary allowed is ten per centum less than it would be on the basis of commissions under the act of eighteen hundred and fifty-four, fixing compensation, then the Postmaster General shall review and readjust under the provisions of said section.

Frequently between 1866 and the date of the passage of the act of 1883 postmasters of the third, fourth, and fifth classes complained that the Post Office Department had misconstrued the acts of 1864 and 1866, and was not readjusting their salaries in accordance with the directions of said acts.

The method then employed by the Post Office Department was as follows: When a postmaster made application for readjustment of salary allowed him between any given day in any year and the same day two years thereafter, the postages sold during the eight quarters preceding the first-mentioned date were first ascertained.

Then the commissions under the act of 1854 were computed on those receipts. The average of these receipts for one year was compared with the annual salary allowed for the two years after the first-mentioned date, and if the commissions showed a sum ten per cent. greater than the salary allowed for the two succeeding years the difference was added to his salary.

The complainants claimed that any postmaster who could show by any quarterly return that his compensation under the act of 1864 was ten per cent. less than it would have been under the act of 1854 should have his salary readjusted, to take effect on the next first day of the succeeding quarter.

In other words, that the correct method of readjustment was to take a given period and compute from the quarterly returns for that period what the commissions would have been under the act of 1854, and, if those commissions aggregated a sum ten per cent. greater than the salary actually paid for that period, to pay the postmaster the difference between the salary he actually received and what he would have received from commissions on the receipts of the office for the same period.

The Post Office Department, however, held to the method under which they had proceeded, and refused to accept the theory of the complainants. This method was based on the theory that the acts of 1864 and 1866 directed the readjustment of the postmasters'
41 salaries to operate prospectively, and that the salary when readjusted should be a prospective salary and not a change of salary during a past period.

The result of these conflicting opinions was the passage of the act of March 3, 1883. This act reads as follows :

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Postmaster General be, and he is hereby, authorized and directed to readjust the salaries of all postmasters and late postmasters of the third, fourth, and fifth classes, under the classification provided for in the act of July first, eighteen hundred and sixty-four, whose salaries have not heretofore been readjusted under the terms of section eight of the act of June twelfth, eighteen hundred and sixty-six, who made sworn returns of receipts and business for readjustment of salary to the Postmaster General, the First Assistant Postmaster General, or the Third Assistant Postmaster General, or who made quarterly returns in conformity to the then existing laws and regulations, showing that the salary allowed was ten per centum less than it would have been upon the basis of commissions under the act of eighteen hundred and fifty-four ; such readjustments to be made in accordance with the mode presented in section eight of the act of June twelfth, eighteen hundred and sixty-six, and to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business, or quarterly returns, were made : Provided, That every readjustment of salary under this act shall be upon a written application signed by the postmaster or late postmaster or legal representative entitled to said readjustment;

and that each payment made shall be by warrant or check on the Treasurer or some assistant treasurer of the United States, made payable to the order of said applicant, and forwarded by mail to him at the post-office within whose delivery he resides, and which address shall be set forth in the application above provided for.

The postmasters who had objected to the methods pursued in the readjustment of their salaries under the acts of 1864 and 1866, believing that this act of 1883 sustained their theory of the readjustment of said salaries, renewed their demands for the readjustment of said salaries in accordance with their views.

On June 9, 1883, Postmaster General Gresham, in a letter addressed to First Assistant Postmaster General Hatton, gave an opinion as to the proper meaning and construction of the law of 1866 and the act of 1883. He held that the act of 1866 did not repeal in part the act of 1864 and was not intended to change the rule of biennial readjustment prospectively on the past receipts; but it simply required that when the quarterly returns of the postmaster of the third, fourth, and fifth classes showed that the salary allowed for the next two preceding years was 10 per cent. less than it would be under the act of 1854 there should be a readjustment, but that the proper mode of readjustment was to use the eight quarterly returns preceding as a basis of determining whether the adjustment under the law of 1864 had been 10 per cent. less than it would have been under the law of 1854; and, if so, to add this to the amount received as salary for the next two years.

On February 13, 1884, in response to the request of Postmaster General Gresham, Attorney General Brewster gave an elaborate opinion as to the proper construction of the statute of 1883. He concurred in the view expressed in Postmaster General Gresham's letter heretofore mentioned, saying, substantially, that while the act said in terms that the salaries should be adjusted according to the mode prescribed in section 8 of the act of 1866, yet, as that section merely added a new proviso to the act of July, 1864, the whole should be read together and not the proviso alone. In other words, that the biennial scheme of readjustment must not be disturbed by the act of 1883.

Both of these opinions agree that if the complainants' construction of the law of 1883 was correct it would, in practice, enable the postmasters to rest their application on some quarter irrespective of biennial adjustment, and to claim the readjustment on the
42 basis of that quarter, thus securing a raise of salary for every exceptionally prosperous quarter.

Postmaster General Gresham's successor and Postmaster General Vilas have proceeded in the readjustment of the salaries of postmasters of the third, fourth, and fifth classes in accordance with the construction of the law as laid down by Postmaster General Gresham and Attorney General Brewster.

Up to the 19th of March, 1886, 24,875 claims had been reviewed. Of this number 9,358 were allowed, the aggregate sum of such allowance being $548,874.44, and 15,518 cases were disallowed. A part

of these were disallowed because returns were lacking and a part because returns failed to show an increase of 10 per cent. for the period covered by the petition and the difference between the salary allowed under the basis of the act of 1864 and the commission basis of 1854. This work is proceeding as rapidly as possible with the small number of clerks allowed for its prosecution.

The Postmaster General is of the opinion that to change the rule adopted as a compliance with the law would create great confusion in the Department and require years of labor in the reconsideration of claims already disposed of, and for payment for part of which Congress has already appropriated $223,695.03.

The committee believe that House bill 6993 will, if it becomes a law, settle this conflict of opinion as to the true method of readjusting the salaries of postmasters of the classes named in the acts of 1864, 1866, and 1883.

This bill provides for the ratification and confirmation of the readjustment of the salaries of postmasters heretofore made by the Postmaster General pursuant to the act of March 3, 1883, as said act was construed by the Attorney General. It also declares that all claims of postmasters or late postmasters which have been disallowed pursuant to this construction or are thereby precluded from allowance have been properly disallowed and barred; that all claims hereafter considered shall be readjusted in accordance with said act as construed by the Attorney General, and that no claim shall be considered which is not presented within three months after the passage of this act. It further provides that no action shall be had in any court against any Postmaster General by reason of his action in reviewing in allowance or disallowance of any application in accordance with said construction under said act.

The Postmaster General, in his last annual report, recommended that January 1, 1887, be fixed as a limit for the presentation of claims for the readjustment of postmasters' salaries under the existing laws.

The committee therefore recommend that House bill 6993 be amended by striking out in the seventeenth and eighteenth lines the words "within three months after the passage of this act," and inserting the words "on or before January 1, 1887," and that as thus amended it be reported in the nature of a substitute for House joint resolution No. 86 and House bill 8250, with a recommendation that it do pass as thus amended, and that said joint resolution No. 86 and bill No. 8250 do lie on the table.

Appended to the report are Postmaster General Gresham's letter to First Assistant Postmaster General Hatton of June 9, 1883; Attorney General Brewster's opinion rendered February 13, 1884; Attorney General Brewster's letter to the Postmaster General of June 14, 1884, and Assistant Attorney General Bryant's letter to Postmaster General Vilas, April 12, 1886.

43 *Claims of Postmasters for Readjustment of Salaries under Act of March 3, 1883.*

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *June* 9, 1883.

Hon. Frank Hatton, First Assistant Postmaster General.

SIR: A careful examination of act approved March 3, 1883, entitled "An act authorizing and directing the Postmaster General to readjust the salaries of certain postmasters in accordance with the provisions of section 8 of the act of June 12, 1866," has satisfied me that the purpose of this legislation is to require the Postmaster General, in all cases in which any one of his predecessors has failed to comply with the provisions of section 2 of the act of July 1, 1864, as amended by section 8 of the act of June 12, 1866, requiring a readjustment of salaries in offices of the third, fourth, and fifth classes, to proceed to make such adjustments under the terms of that section.

It is essential, therefore, to ascertain the exact meaning of section 2 of the act of July 1, 1864, and the change effected by the amendment of June 12, 1866.

The act of June 22, 1854, authorized the Postmaster General to allow commissions to postmasters at the following rates on the postage collected at their respective offices in each quarter of the year, and in due proportion for any period less than a quarter:

On not exceeding $100, 60 per cent.

Over $100 and not exceeding $400, 50 per cent.

Over $400 and not exceeding $2,400, 40 per cent.

Over $2,400, 15 per cent.

There are certain qualifications and additions to these commissions not necessary to enumerate for the purpose of this examination.

Under the provisions of this act the commissions were allowed to postmasters upon each quarterly return.

The act of July 1, 1864, classified postmasters according to the salary received. Those whose compensation was not less than $3,000 yearly were placed in the first class; those whose commissions were below that sum and yet reached $2,000 per annum were of the second class; post offices with the salaries between $1,000 and $2,000 were of the third class; those between $100 and $1,000 of the fourth class, and those under $100 constituted the fifth class.

Post offices were to be arranged in these classes whenever for the two consecutive years next preceding July 1, 1864, the compensation at the office should have amounted to the average sum assigned to the class.

The second section of the act reads as follows:

"And be it further enacted, That the Postmaster General shall review once in two years, and in special cases, upon satisfactory representation, as much oftener as he may deem expedient, and readjust, on the basis of the preceding section, the salary assigned by

him to any office; but any change made in such salary shall not take effect until the first day of the quarter next following such order, and all orders made assigning or changing salaries shall be made in writing and recorded in his journal and notified to the auditor for the Post-Office Department."

Under this legislation it resulted that while under the act of June 22, 1854, postmasters received their compensation based upon each quarterly return, they were in future to be paid salaries for two years, based upon the average amount of receipts as shown by their quarterly returns for two years preceding the 1st day of July, 1864, calculated upon the basis fixed in the act of June 22, 1854.

As this general legislation, however, fixing absolutely the salary of a postmaster for two years in advance upon the basis of his receipts for the two years preceding, would, in rapidly growing communities, work an injustice to postmasters, the revenues of whose offices would be largely increased without any corresponding increase during the two years in their salary, the Postmaster General was authorized, "in special cases, upon satisfactory representation, as much oftener as he may deem expedient," to make such readjustment "on the basis of the preceding section."

The rule fixed by this legislation was a biennial readjustment of salaries. The exception to this rule was the exercise by the Postmaster General of a discretion "in special cases."

After this act had been in force for nearly two years the second section was amended by adding the following:

"Provided, That when the quarterly returns of any postmaster of the third, fourth, and fifth class show that the salary allowed is ten per centum less than it would be on the basis of commissions under the act of 1854 fixing compensation, then the Postmaster General shall review and readjust under the provisions of said section."

There is no attempt in this amendment to change the settled rule of biennial readjustment. It requires simply that when the
44 "quarterly returns" at offices of the third, fourth, and fifth class show that the salary allowed upon the average annual compensation of postmasters for the two next preceding years is 10 per cent. less than it would be on the basis of the act of 1854 (which basis is the actual quarterly returns themselves), then the Postmaster General shall adjust upon the quarterly returns.

The substitution of a salary for two years by the act of July 1, 1864, based upon the average returns for two years, in place of commissions upon each quarterly return, was not abandoned by the amendment, but it was provided that where the effect of taking the average of annual compensation of postmasters for the two years preceding was to reduce the compensation of the postmasters 10 per cent. below what it would be by using the eight preceding quarterly returns themselves as a basis the postmaster at such office belonging either to the third, fourth, or fifth class should have the adjustment upon the actual quarterly returns.

This construction leaves in full force the policy inaugurated by the act of July 1, 1864, of paying salaries to postmasters which are

fixed for a period of two years in advance, the amendment simply providing that all postmasters of the third, fourth, and fifth class whose compensation was thus reduced 10 per cent. or more below what they would have received under the act of 1854 shall have their salaries readjusted and fixed upon the basis of the latter act.

This construction of the amendment leaves in full force the discretion conferred upon the Postmaster General to make a readjustment "in special cases upon satisfactory representation as much oftener as he may deem expedient."

I am aware a persistent effort has been made for years to make it appear that it was an imperative duty of the Postmaster General under the amendment to examine each quarterly return as made by postmasters of the third, fourth, and fifth class, with a view of ascertaining whether officers of these classes would have their compensation reduced on the basis of the act of 1864 as much as 10 per cent. below the basis of the act of 1854, and, if this result appeared to make the adjustment quarterly, as though the act of 1864 had not been passed. This construction of the amendment would practically destroy the principles of legislation of which it formed a part as to all officers claimed to be within its provisions and render biennial adjustments as to them not only unnecessary, but absolutely impossible. It was not the intention of Congress by the amendment of 1866 to repeal any part of the statute of 1864. The latter statute was to stand, the amendment simply securing to officers of the designated classes the right to have their biennial adjustments of salaries made upon the basis of the act of 1854 instead of the act of 1864 whenever they could save 10 per cent. by this course.

If, in fact, there are cases in which it appeared from the quarterly returns or from sworn reports of receipts and business that postmasters of the third, fourth, and fifth class at the biennial readjustments had their salaries fixed under the act of 1864, when, by an adjustment under the act of 1854, 10 per cent. or more would have been added to their salaries, then under the act of 1883 such postmasters are entitled to whatever additional sum they would and should have received under the act of 1854.

In all cases, therefore, in which applications are made for readjustment under the act of 1883, signed by the postmasters or late postmasters of the third, fourth, and fifth classes, or, if deceased, by their executors or administrators, you will take the necessary steps to determine from the sworn returns of receipts and business for readjustment or from the quarterly returns made whether any additional sum is due under section 8 of the act of 1866 as herein construed.

Very respectfully,

W. Q. GRESHAM,
Postmaster General.

DEPARTMENT OF JUSTICE,
WASHINGTON, *February* 13, 1884.

SIR: Your communication of August 25th ultimo submits for my opinion certain matters which are substantially embraced in the following questions:

(1.) Has Congress by the act of March 3, 1883 (22 Stat., 467), directed the Postmaster General to readjust salaries, on application under the act, otherwise than in accordance with the provisions of the acts of 1864 and 1866, therein mentioned? (13 Stat., 335; 14 Stat., 59.)

(2.) If it has not, what do these provisions require of him in making such readjustments?

In answering the first inquiry it must be determined whether the act of 1883 merely directs the readjustments to be in accordance with the act of 1866 (which is in terms an amendment of the act of 1864) or was intended to effect in any way the construction of those acts.

I agree with you in the opinion that it was not so intended, and for the following reasons:

The construction of statutes is more especially the function of the judiciary. Legislators may declare how an act shall in future be construed, but it will not be inferred that they have undertaken to control existing rights of parties under prior statutes.

45 Congress had evidently been led to believe that there were cases in which parties claiming to be entitled to readjustment of salary under the amended act of 1864 had for some reason failed to obtain the benefit of that legislation. The act of 1883 gives these parties an opportunity to apply now for such readjustment as might have been and was not obtained under the mandatory provisions of the amended act. It does not indicate by whose fault those provisions failed to be executed in these cases (and so far as chargeable to the postmasters,' in effect, condones the fault), but it specifies certain conditions precedent to the readjustment directed and then prescribes the mode of readjustment.

The titles of its beneficiaries rests on three requisitions:

(1.) That their salaries have not theretofore been readjusted under the terms of the amendment of 1866.

(2.) That they have made sworn returns of receipts and business for readjustment to the Postmaster General, or his first or third assistant, of quarterly returns in conformity with the then existing laws and regulations.

(3.) That the sworn receipts or quarterly returns shall show that the salary allowed was 10 per cent. less than their compensation would have been under the act of 1854.

On these conditions the readjustment must be made in accordance with the mode presented in the amendment of 1866, and to date from the beginning of the quarter succeeding that in which such sworn or quarterly returns were made.

This includes all that is essential in the act. Its structure, as will be seen, is simple and its purport clear.

Congress was presumably advised that there had been differences of opinion between the Postmaster General and some postmasters as to his duties under the said amended act, yet it has (judiciously, no doubt) made no declaration touching the construction of that act, but has merely directed the new readjustments to be in accordance with the former law, referring also to the classification and returns provided for by prior laws and regulations in such away as to indicate that no deviation from the course of proceeding thereby established was intended, unless by possibility some of the returns now admissible for readjustment were not considered to be so under such laws and regulations, a detail of proceeding which does not affect the general result.

The act seems, therefore, to me to be in entire harmony with the general policy of the law and to exhibit by strong internal evidence the disposition of Congress to simply carry out the former law, leaving its meaning to be determined by the usual and proper methods.

I proceed, therefore, to the second and principal inquiry; as to which it should be premised, that as you have not included any statement of the action taken by your Department in any particular cases presented for readjustment before or since the act of 1883, I shall treat the question as one simply of construction and without references to any views or action of your Department in the premises which have not officially been brought to my notice. My concurrence or disagreement with the views expressed in your letter of June 9 ultimo, to which my attention is called, will sufficiently appear without undertaking to consider them in detail, as I presume it is my opinion on the point involved that you in substance desire.

A more definite statement of the question would be this: How did the act of 1864 require the salaries of postmasters of the third, fourth, and fifth classes to be readjusted, and what change in such requirement was effected by the proviso added to the second section of that act by the act of 1866?

Prior to the act of 1864 the classification provided for in it did not exist and the compensation of postmasters was determined and awarded quarterly by the Sixth Auditor of the Treasury on the basis of returns required to be made by them to him quarterly of certain prescribed statistics of their business, the last preceding general regulation of the subject having been made by the act of July 1, 1854 (10 Stat., 298).

Congress must have found some serious objection to this system of quarterly adjustments of compensation for past service when it substituted the radically different method of compensating postmasters by fixed prospective salaries assigned by the Postmaster General for a definite period, with provisions for periodical readjustment, a system which it has ever since maintained.

So marked a change of policy is not to be ignored in determining the legislative intent in particular minor additions to amendments of the general scheme. The presumption of a matured consistent purpose in such legislation ought to control whenever it is sought

by dubious expressions to destroy or impair the integrity of the new order of things introduced by the act of 1864.

No question is presented as to the meaning of the act of 1864 standing alone, but it is important to note its main provisions in order to understand the amendment of 1866.

It declares that the annual compensation of postmasters shall be at a fixed salary in lieu of commissions—the postmasters to
46 be divided into five classes—the salaries in the first class to be not more than $4,000 and not less than $3,000, and so grading the salaries on downward in the other classes.

It further declares that the compensation of postmasters of the several classes aforesaid shall be established by the Postmaster General under the rules thereinafter provided, which were in substance as follows:

First. To assign each office to its proper class by determining the average annual sum paid as compensation to its postmaster for the two consecutive years next preceding July 1, 1864.

Where this sum amounted to less than $2,000 and not less than $1,000 the office was to be assigned to the third class, amounting to less than $1,000 but not less than $100 to the fourth, and when less than $100 to the fifth class.

Second. To assign its each office its salary within the limits of its class for the ensuing biennial period by taking not the exact "average annual sum" before determined, but for the first, second, and third classes a sum "in even hundreds of dollars as nearly as practicable in amount the same as but not exceeding" the sum so determined, and for the fourth class even tens, and the fifth even dollars in the same way.

The operation of these rules will be better understood by illustration. If, for instance, the commissions of an office for the eight quarters preceding July 1, 1864, were $2,010 (and in the term "commissions" I intend throughout this opinion to include whatever was allowed as compensation by the act of 1854), the average annual sum of $1,005 would grade it in the third class, and the salary, in even hundreds, assigned would be $1,000 per annum for the ensuing two years. If, again, the average annual sum for the two consecutive years was $1,990, the office would fall in the third class, with a salary of $1,900 per annum for the ensuing two years.

The second section of the act, then, requires the Postmaster General once in two years to review and readjust, "on the basis of the preceding section" (that is, in the manner above described), the salary assigned by him to any office, and to record in writing his order thereon;" but any change made in such salary shall not take effect until the first day of the quarter next following such order."

As compared with the system of quarterly adjustment for past service on the basis of commissions, which it superseded, the new system assigning a fixed salary for future service for two years on the basis of past earnings, which would have been open to objection if it had not made provision for cases of unusual variation from the adopted standard, as when from temporary or permanent causes the business at a particular office should increase very rapidly within

the biennial period; and so it was provided that "in special cases, upon satisfactory representation," the review and readjustment should be as much oftener than once in two years as the Postmaster General might deem expedient.

This relieves the salary plan from the imputation of permitting a possibly wide variation between the amount of service and its just compensation, while the designation "special cases" indicates that exact adjustments in accordance with the old systems were not in general intended.

There are some features of the cited provisions of the act that should be specially observed. One is that the biennial readjustment is mandatory in every case, and that the provision for additional or intermediate review in "special cases" is discretionary, which indicates that in the legislative purpose at that time these provisions were regarded relatively as the rule and the exception.

Another is that the readjustment, whether biennial or otherwise, is required to be "on the basis of the preceding (first) section," which provides, as has been shown, for a computation from the business of the two preceding years to fix the compensation of the two years ensuing, which proves that there was no idea of retrospective readjustment in any case, or of any proceeding radically inconsistent with the new system.

In the absence of evidence to the contrary, it is to be presumed that the provisions of this act were observed by the Postmaster General; indeed, the whole controversy, as I understand it, arose after the second section of the act was amended by adding at the end of it a proviso which was enacted by the eighth section of the act of June 12, 1866, chapter 114, entitled "An act to amend the postal laws." (14 Stats., 60.)

The section so amended is as follows:

"SEC. 2. And be it further enacted, That the Postmaster General shall review once in two years and in special cases, upon satisfactory representation, as much oftener as he may deem expedient, and readjust on the basis of the preceding section the salary assigned by him to any office; but any change made in such salary shall not take effect until the first day of the quarter next following such order, and all orders made assigning or changing salaries shall be made in writing and recorded in his journal, and notified to the auditor for the Post-Office Department: Provided, That when the quarterly returns of any postmaster of the third, fourth, or fifth class show that the salary allowed is 10 per centum less than it would be on the basis of commissions under the act of 1854, fixing compensation, then the Postmaster General shall review and readjust under the provisions of said section."

47 In considering the meaning of this proviso it must be borne in mind that it was annexed to a provision for biennial readjustment before the expiration of the first biennial period therein provided for; and as the usual and proper function of a proviso is to introduce some limitation consistent with, or at least not destructive of, the general intent of the enacting clause it must be presumed that Congress in this case intended rather to perfect the

salary system than to overturn and unsettle it before it had been fairly inaugurated. If there could be any doubt of this the fact that Congress has continued that system ever since 1864 would demonstrate it. It should require, therefore, a very clear expression to justify a construction of the proviso which would destroy or impair the main purpose of the amended act.

Reading the amendment as directed by the enacting clause of section 8 of the act of 1866 in connection with section 2 of the act of 1864 will exhibit more clearly its effect.

It is confined to three of the classes, as to which it directs two things; first, when, and second, how, the Postmaster General shall readjust.

Before the addition he was commanded to readjust in every case once in two years. As to three classes Congress then adds a provision that he shall readjust (only) when something is shown by something. The thing to be shown is that the "salary allowed" is 10 per centum less than it would be on the basis of commissions, and the phrase quoted is the only one of possible doubtful meaning.

By the rules of construction it should have the meaning belonging to it when used or referred to elsewhere in the section or act, unless good reason to the contrary can be shown. The equivalent expression, "salary assigned," occurs in the section, and the first section is largely occupied with the mode of allowance. The "salary" so described is nothing less than a biennial allowance, and the phrase in question must, on its face at least, be so understood. If Congress is supposed to have meant anything else the meaning must evidently be one that does not harmonize with the context, and is therefore not to be presumed.

But this thing, whatever it is, must be shown by "the quarterly returns," and cannot therefore, on the face of it, be shown by any single return. Looking again at the context it is found that the readjustment is to be made on the basis of the preceding (first) section, and that shows it to be on the (eight) returns showing the average of annual compensation for the two years next preceding the adjustment (the Postmaster General being authorized to estimate for any returns not received). It must be presumed that these are the returns intended by the "quarterly returns," unless some different meaning of the phrase can be clearly shown, for this construction is not only entirely harmonious with the context, but I am unable to see how the comparison directed can be properly made in any other way. The "salary allowed" being determined by the annual average computed from eight consecutive past quarterly returns as the established compensation of the office for the eight ensuing quarters, how can such an average biennial salary be shown to be 10 per centum less than it would be on the basis of commissions, unless by comparison with the commissions of the entire period for which the salary is allowed?

There is nothing, then, in this part of the amendment to indicate that Congress intended to set aside the biennial system. On the contrary, it is explicitly recognized and the modification is introduced with the manifest reference to it, so that thereafter the Post-

master General should readjust at a biennial period the salaries (in the three classes) only on the showing therein prescribed.

The final direction further demonstrates this. He is, on such showing, to "review and readjust under the provisions of said section." The section referred to is shown by the enacting clause of section 8 of the act of 1866 to be section 2 of the act of 1864, and this the Supreme Court has also affirmed (McLean's case, 95 U. S., 753); that section provides principally for mandatory biennial readjustments, to which the amendment, being mandatory, also must refer, being equivalent, therefore, to a direction to the Postmaster General to readjust biennially, as directed in 1864 under the said amendment.

This construction excludes, of course, any interference with the new salary system by mandatory readjustments of more than biennial frequency, and really strengthens and solidifies that system by dispensing in effect with the biennial readjustment (in three classes) when comparison at the close of a biennial period of the salary allowed therefor to an office, with its income for such period on the basis of commissions, shows that the salary differs from the commissions by less than 10 per centum.

The discussion might well be closed here, for it ought to be enough to point out what the amendment declares, according to the fair, natural meaning of its terms, and to show that this harmonizes, as it ought, with the fundamental purposes and policy of Congress in the act so amended; but, as the matter has been much in controversy, it may be of advantage to consider further the probable object of this provision as above construed, since it may fairly be assumed to have been intended to remedy some defect in the act of 1864.

That act in June, 1886, was about to be or was being put into operation for the first time, as respected readjustments; and the Postmaster General on the one hand and the postmasters on the
48 other were concerned in its mandatory provisions, the former because he was required to readjust (according to the first section) every postmaster's salary in a schedule of (at that time) more than twenty-nine thousand offices—a task manifestly of great magnitude which had not theretofore been assigned to the Post Office Department, and which would of necessity add greatly to the labor and responsibility imposed upon it; the latter because they were for the first time graded in classes under novel regulations affecting their relations towards one another as well as to the Government.

The amendment would evidently be a measure of relief to the Postmaster General and his Department, since it would save the labor of actual readjustment in many (probably a large majority) of the cases, in which it could be determined by mere inspection that it was not required.

This would be a sufficient legislative motive; but the amendment also affects the postmasters of the three classes severally by removing an inequality which the act of 1864 had created, and which can be better understood by illustration.

As the salary (of the third class, for example) was to be assigned in even hundreds, as nearly as practicable, the same as but not exceeding the average annual compensation for the preceding two years, it is plain that a postmaster whose average annual compensation was $1,900 would have to show an average increase of between 5 and 6 per centum of commissions only in order to get $100 added to his salary, while a postmaster whose average annual compensation was $1,000 would have to show an average increase of 10 per centum to get a salary of $1,100.

Here, then, was a clear discrimination created by the act of 1864 (through inadvertence, perhaps) in favor of the postmasters in each class having the higher rates of salary. The intent and effect of the proviso was that in every case the same percentage of difference should be found in order to readjust, and so the apparent injustice to the lower-salaried officers was removed.

That the amendment modifies the prior law so as to produce these two results must, in my judgment, be conceded, and as Congress must be presumed to have intended the legitimate consequences of its declaration, and these are in harmony with the ruling spirit and purpose of the new postal legislation, it would seem that full and reasonable effect is given to the proviso by accepting these as its real and sufficient objects, unless some additional purpose not inconsistent therewith can be shown.

This I have not been able to discover; but it is due to the ability and earnestness with which the views of counsel representing the postmasters have been urged upon my attention that I should briefly state my reasons for not concurring therein.

The substance of their contention is, as I understand it, that the amendment required the Postmaster General thereafter to examine each quarterly return in the three classes to ascertain whether the proportionate part of the biennial salary allowed, which would be payable for the quarter in question was less by ten per centum than the amount of commissions computable on the return, under the act of 1854, and to readjust whenever that appeared.

This is certainly a radical change, which it is supposed the amendment was intended to affect. It would virtually annihilate the biennial salary system, for there were then only about three hundred offices of the first and second classes and more than twenty-nine thousand of the other three. The intent to do this connot be presumed; it must be shown by very clear proof.

It is not enough to say, therefore, that the construction proposed is not incompatible with the language of the proviso. It should appear to be the only meaning of which that enactment is susceptible, whereas the fact is that no such meaning can be extracted from its language without interpolating some parts of the text and disregarding others. Thus the phrase "when the quarterly returns" must be changed to "whenever any quarterly return;" the phrase "the salary allowed" requires the addition of the explanation "for such quarter," and the direction to "readjust under the provisions of said (second) section" must be ignored.

Such liberties with the phraseology might possibly be tolerable

if necessary to carry out the main intent of the act amended, but they cannot be admitted for the purpose of destroying it, so long, at least, as a more favorable construction is possible. With even greater reason must a construction be rejected which gives no effect to the clause directing the manner of readjustment to be under section 2 and therefore biennially.

To overcome these objections an alleged grievance of some postmasters, which it is assumed that Congress intended to remedy, seems to be relied upon, and it amounts in substance to this: that in some or in many cases the biennial salary might or did, in a given quarter, fall short of the postmaster's earnings on the old basis of commissions for that quarter; that the old basis was the juster one to the officer, and Congress must be presumed to have intended in the proviso to go back to it in substance in some way which, as it will be seen, is not easily explained.

The fundamental objection to this construction is that it rests on the assumption that Congress, while professedly amending the act of 1864, intended to substantially nullify it, a position which is not only repugnant to settled legal principles, but which, in view of the fact that the system inaugurated in that act has been continued and enforced in all essential particulars, appears to be especially visionary.

49 Another unfounded assumption is that such an amendment was needed to secure to postmasters just compensation in case the salary allowed should turn out to be far below their earnings on the basis of commissions. The act of 1864 makes ample provision for such cases by special readjustment in the Postmaster General's discretion. There is nothing in the amendment to indicate that Congress intended to repeal or in any way limit this discretion. On the contrary, it declares that the conditional readjustments it prescribes (which have no apparent reference to the special cases mentioned in section 2) are to be conducted under the provisions of that section. To be so conducted they must be readjusted as special cases on satisfactory representation at such times as the Postmaster General may deem expedient under the exceptional authority given him, or biennially under the general mandatory provisions of the act, and that Congress could not have referred to the exceptional, but must have intended the regular, mode of readjustment is manifest.

As to any suggestion that the amendment may have been framed to protect postmasters by reason of some supposed failure of the Postmaster General to properly exercise his discretionary authority, there is no evidence of that in the act, where it should be found, and if Congress had any such supposition (a thing I have no right to presume) and intended to rebuke the administration of that Department as indicated, it has taken singular pains to conceal its purpose by the use of language conveying a very different meaning.

Stripped of this special motive, there remains but the claim of a general equity to justify the postmasters' construction, based apparently upon the assumption that they are somehow entitled to be compensated on the basis of commissions rather than by salary.

This cannot be so. The right to compensation in such case can rise to no higher level than that of its statutory source; no one is

obliged to become or remain a postmaster against his will; but while such existing law is the measure of his compensation in every sense, Congress did not intend, in substituting the salary for the commission system, to give postmasters an exact equivalent of their earnings under the latter plan. It deliberately provided a scheme by which the salary should never exceed the commission standard, and would ordinarily be less by a difference extending to the limit of 10 per cent. Thus, as before shown, for commission earnings between $1,000 and $1,100 the prospective salary assigned would be $1,000. No postmaster, then, after the act of 1864, could reasonably claim that such a law invaded any of his rights, and the amendment of 1866 extended its scope by making the 10 per centum difference impartially applicable in the three classes we have seen. When Congress, as to one of the classes, saw fit to change the law, it did so, but that does not affect the present question.

A fair test of the merit of the proposed construction is to consider the results which would follow from carrying it into effect. We may suppose, for instance, the case of a postmaster with an allowed salary of $1,000 per annum, whose first quarterly return thereafter shows that on the basis of commissions he would have earned during the quarter $275. By the construction in question the Postmaster General must have forthwith ascertained this, and must thereupon proceed to readjust the salary, but in what manner?

One suggestion is that it should be retrospective, raising the salary for the past quarter to equal the commissions, but this would virtually wipe out the salary system, and is prohibited by the act of 1864, as construed in McLean's case (95 U. S., 753), and by the act of 1863.

The readjustment must, therefore, take effect prospectively, and as there is no provision for assigning a salary for less than two years, the Postmaster General must assign him a salary for that period in advance, but he cannot determine its amount under the act of 1864 from a single return, for it depends upon the annual average from eight consecutive quarterly returns. If he can escape that difficulty and can assign a salary of $1,100 per annum for two years from that return, what is he to do at the end of the next quarter, if its returns show commissions of but $225, except to make a new biennial readjustment on the basis of that return, and so go on quarter by quarter maintaining the farce of a biennial system readjusted quarterly? Is it conceivable that Congress intended such anomalous and absurd results as are begotten by such a construction of its amendment of the postal law of 1864?

It is needless to further pursue the inquiry. There is no aspect of it in which that construction is not destructive of the very essence of the act amended, and that intent cannot be admitted unless openly declared, or by an inference which has no alternative. There is no such declaration, and that there is no such necessary inference has been shown.

The practical conclusion of this discussion is that in my opinion you are directed by the act of 1883 to make now, on behalf of any applicant thereunder who is found to be entitled under the con-

ditions precedent prescribed in that act, the readjustment or readjustments of salary which he may so claim and be found to have been entitled to at any or more of the biennial periods since the act of 1864, under that act as amended by the proviso added thereto by the act of 1866 as above construed, crediting the applicant of course with any difference in his favor between the amount (or proportional amount) of the salary so readjusted for the prospective biennial period and the salary paid to him for the time of his services in such period.

Very respectfully,

BENJAMIN HARRIS BREWSTER,
Attorney General.

Hon. W. Q. Gresham, Postmaster General.

DEPARTMENT OF JUSTICE,
WASHINGTON, *June* 14, 1884.

SIR: Your letter of this date states that it is claimed under the acts of 1864, 1866, and 1883 (relating to postmasters' salaries), as interpreted by my opinion of February 13 ultimo, that a postmaster whose salary was duly readjusted on July 1, 1868, for the ensuing biennial period, and whose readjusted salary during that period was 10 per cent. less than the compensation which he would have received during such period if computed upon the basis of commissions, under the act of 1854, is now entitled to be paid the difference between such salary received and such computed compensation, for the period in question.

In my judgment the claim is not well founded, and there is nothing in the opinion that was intended to sustain such a conclusion or that seems to me to have that effect.

In McLean's case (95 U. S., 753), referred to in my opinion, the court declared that the readjustment directed by the legislation of 1864 and 1866 "takes effect in all cases prospectively." The above claim is for a retrospective settlement—a proceeding not warranted by the said acts, according to my understanding of them and of the opinion of the Supreme Court.

Very respectfully,

BENJAMIN HARRIS BREWSTER,
Attorney General.

The Postmaster General.

POST-OFFICE DEPARTMENT,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
WASHINGTON, D. C., *April* 12, 1887.

SIR: I have the honor to acknowledge the receipt of the communication of Hon. H. H. Bingham, M. C., addressed to you, relative to the readjustment of salaries under the act of March 3, 1883 (22 Stat., p. 487), referred to me April 8th, instant. He states that numerous complaints are made that the Postmaster General refuses to readjust salaries of postmasters under said act; and that it is alleged that your predecessor, General Gresham, as to his duty under the law,

secured the advice of Attorney General Brewster, on the 13th of February, 1884, a copy of whose opinion upon the subject you request. He further states that it is charged that the Postmaster General, in violation of orders issued from the Department, which he cites, refuses to readjust salaries of postmasters who claim such readjustment by virtue of said act. He also refers to other charges or complaints made that this Department is proceeding in such readjustment in a manner contrary to the intendment of the law.

He also desires to be informed whether the application for readjustment of any postmaster or late postmaster of either of the classes named in the act of March 3, 1883, who made quarterly returns in conformity with then existing laws and regulations, showing that the salary allowed was 10 per cent. less than it would have been upon the basis of commissions under the act of 1854, has been refused; and, if so, in what numbers such application has been refused, and that you cite the paramount law or authority upon which such refusals are based.

He also desires to be informed whether, in your opinion, any additional legislation is required to secure the readjustment of the salaries of all postmasters and late postmasters of the classes named in said act of 1883, and whether, in your opinion, any further legislation is necessary to prevent the allowance of additional salaries to postmasters who have heretofore been paid salaries equal to the commissions.

In compliance with your request that I prepare a statement of the subject, I have the honor to state that the complaints to which he refers arise from the fact that the construction of the several statutes involved in the readjustment of these salaries, given by Postmaster General Gresham and by Attorney General Brewster, and the process of readjustment adopted in pursuance thereof, do not in some cases reach the result that was expected by the promoters of the legislation of 1883; in other words, many of the postmasters, instigated by interested attorneys and claim agents, have been led to believe that the Department is willfully violating the law in order to deprive them of a sum which they have been induced to think that the law entitles them to.

51 In order to present this matter clearly to you and to the committee it will be necessary to submit at some length a statement of the legislation and of the construction of the several acts involved, which has been the basis of departmental action upon this class of claims.

The act of June 22, 1854 (10 Stat., p. 298), fixed the compensation of postmasters on the basis of commissions on postages collected at their respective offices in each quarter of the year, and in due proportion for any period less than a quarter.

The commissions were: On not exceeding $100, 60 per cent.; on over $100 and not over $400, 50 per cent.; on over $400 and not over $2,400, 40 per cent.; on over $2,400, 15 per cent.

There were certain qualifications and additions in peculiar cases to these commissions not necessary to be considered in this statement.

The act of July 1, 1864 (13 Stat., p. 335), made a material change

in the method of adjusting compensation. It classified the offices; provided that the compensation should be "a fixed salary in lieu of commissions." The offices were to be classified and salaries adjusted from July 1, 1864, upon the basis of the average annual sum received for the two years preceding said date. The first section, after classifying the offices, provided:

"Whenever the compensation of postmasters of the several offices for the two consecutive years next preceding the 1st day of July, 1864, shall have amounted to an average annual sum not less than $3,000, such office shall be assigned to the first class; whenever it shall have amounted to less than $3,000 but not less than $2,000, such office shall be assigned to the second class."

The other classes were graded down accordingly. The section then provides:

"To offices of the first, second, and third classes shall be severally assigned salaries in even hundreds of dollars, as nearly as practicable, in amount the same as, but not exceeding, the average annual compensation of the postmaster thereof for the two years next preceding; and to offices of the fourth class shall be assigned, severally, salaries in even tens of dollars, as nearly as practicable, in amount the same as, but not exceeding, the average compensation of the postmaster for the two years next preceding." Salaries as to the fifth class were to be assigned "in even dollars, but not exceeding such average compensation for the two years next preceding."

Section 2 of said act of 1864 reads as follows:

"And be it further enacted, That the Postmaster General shall review once in two years, and in special cases and upon satisfactory representations as much oftener as he may deem expedient, and readjust on the basis of the preceding section; but any change made in such salary shall not take effect until the first day of the quarter next following such order, and all orders made assigning or changing salaries shall be made in writing and recorded in his journal and notified to the auditor of the Post-Office Department."

This legislation, it will be readily seen, changed the basis of compensation. It abandoned the allowance of commissions on the sale of postages for each quarter upon the returns of that quarter, and adopted a biennial system of readjustment upon the basis of the annual compensation allowed for the two preceding years. It inaugurated a system of assigning salaries, prospectively, for two years on the basis of the average annual compensation for the two preceding years. As this might work injustice in cases where the business was largely and rapidly increasing the second section authorized readjustments in special cases on satisfactory representations, but in such cases the readjustment was to take effect prospectively, "not until the first day of the quarter next following such order" of readjustment.

This act, after two years of operation, gave rise to some complaints, and the second section above quoted was amended by the act of June, 1866 (14 Stat., p. 60, sec. 8), as follows:

"SEC. 8. And be it further enacted, That section 2 of the act entitled 'An act to establish salaries of postmasters, and for other pur-

poses,' approved July 1, 1864, be amended by adding the following: 'Provided, That when the quarterly returns of any postmaster of the third, fourth, or fifth class show that the salary allowed is 10 per centum less than it would be on the basis of commissions under the act of 1854 fixing compensation, then the Postmaster General shall readjust and review under the provisions of said section.'"

The words "said section" refer evidently to section 2 of the act of 1864 amended by this act, and not to the act of 1854.

Judge Gresham and Attorney General Brewster were, therefore, of opinion that the effect and the proper construction of said section 8 of the act of 1866 were not to require an allowance of salary upon the basis of commissions for a given quarter on the returns of that quarter. In other words, they held that it was not intended as an abandonment of the biennial and prospective system of adjustment, but that in readjusting under the biennial system it required the Postmaster General to ascertain (1) the average annual compensation for two preceding years; (2) what such compensation for the two preceding years would have been on the basis of commis-
52 sions, and if the amount allowed was 10 per cent. less than it would have been for the same period on the basis of commissions, then to take the basis of commission during the preceding two years, instead of the average annual salary allowed, as the criterion for fixing the prospective salary.

It appears that these readjustments or allowances of salary under the act of 1866 were not made in all cases. It is stated by the Hon. James N. Tyner, then First Assistant Postmaster General, in a letter of date February 10, 1879, to the Hon. D. C. Giddings, then a member of the Post-Office Committe, that the Postmaster General, who acted under the law of 1866, construed it as requiring him to examine applications for readjustments of salaries, other than biennial, when the applications were made by postmasters, and that he did not regard it as his duty to take up cases out of the biennial order in the absence of such special application. He further stated that in some cases is was done under special application, and that all postmasters were advised of their right to apply for special readjustments under the act of 1864. His letter will be found in the Congressional Record of the debates in the House on April 3, 1882. This letter is here referred to as throwing light upon the reason why readjustments were not made in all cases under the act of 1866.

The act of March 3, 1883, providing for the readjustment of the salaries in these cases, reads as follows:

"That the Postmaster General be, and he is hereby, authorized and directed to readjust the salaries of all postmasters and late postmasters of the third, fourth, and fifth classes, under the classification provided for in the act of July 1, 1864, whose salaries have not heretofore been readjusted under the terms of section 8 of the act of June 12, 1866, who made sworn returns of receipts and business for readjustment of salary to the Postmaster General, the First Assistant Postmaster General, or the Third Assistant Postmaster General, or who made quarterly returns in conformity to the then existing laws and regulations, showing that the salary allowed was 10 per centum

less than it would have been upon the basis of commissions under the act of 1854; such readjustments to be made in accordance with the mode presented in section 8 of the act of June 12, 1866, and to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business, or quarterly returns, were made: Provided, That every readjustment of salary under this act shall be upon a written application, signed by the postmaster or late postmaster, or legal representative entitled to said readjustment, and that each payment made shall be by warrant or check on the Treasurer or some assistant treasurer of the United States, made payable to the order of said applicant, and forwarded by mail to him at the post office within whose delivery he resides, and which address shall be set forth in the application above provided for."

This act was most unfortunately phrased, and, as it has been construed, it falls short of the desires and expectations of many on whose complaints and petitions it was enacted. No construction can be placed upon it which will meet the desires of these claimants and the pretensions of their counsel without doing violence to its express terms.

Postmaster General Gresham, an able jurist, gave this act a careful study, and in a letter of June 9, 1863, expressed his views upon it. A copy of his letter is herewith submitted. The conclusion at which he arrived was that the act of 1866 (section 8) amending the act of 1864 (section 2) did not attempt or intend to change the settled rule of biennial readjustment prospectively on past receipts, but that it required simply that when the quarterly returns of offices of the third, fourth, and fifth classes showed that the salary allowed was 10 per centum less than it would be on the basis of the act of 1854, then the salary for the prospective biennial period shall be based upon the quarterly returns for two preceding years, instead of upon the average annual compensation for the two preceding years.

Hon. B. H. Brewster, Attorney General, was requested by Postmaster General Gresham to construe the law, and submitted a very elaborate and exhaustive opinion, of date February 13, 1884, of which a copy is herewith inclosed.

The conclusion at which he arrived may be summarized as follows: That the act of 1883 required the readjustment of salaries, which it directod to be in accordance with the mode presented in section 8 of the act of June, 1866 (as is expressly declared in the act of 1883); that the act of 1866 expressly declares that readjustment thereunder shall be made under the provisions of section 2 of the act of 1864 (as said act of 1866 expressly so requires). Turning to section 2 of the act of 1864, it will be seen that it required readjustments to be on the basis of the preceding section—that is to say, the two preceding years' compensation being taken as the basis of salary for the two preceding years from any point of time of readjustment. Hence he argues that the aim of the act of 1866 not being intended to overturn the biennial system of readjustment, the future salary to be based on the average annual compensation for the two preceding years, it meant that the future salary should be based upon

the eight preceding returns when it appeared that, by that basis, the compensation actually allowed was 10 per cent. less than it would have been if made by commissions on the receipts of the office as shown by the returns.

53 Such construction, while it works results different from the expectations of many claimants, gives effect and meaning, so Attorney General Brewster argues very clearly, to every part and clause of the act of 1883. There is great force in his reasoning and perhaps it is the correct interpretation.

It is contended by the counsel for the claimants, who are inspiring the complaints against the Department, that the proper method of readjustment is to take a given period, say from July 1, 1870, to June 30, 1872, to compute from the quarterly returns for that period what the commissions would have been under the act of 1854, and if such amount is equal to or more than eleven-tenths of the salary actually paid for that period, then to pay the postmaster holding the office for that period the difference between the pay he actually received and what he would have derived from commissions upon the receipts of the office for the same period. The gravamen of all the complaints against the Department, as I understand, is that readjustments are not so made by making them on the basis of commission on the returns for a given period when by that method and basis 10 per cent. or more will be added to the compensation as fixed under the act of 1864 for the same period. Such is the interpretation sought to be declared by House resolution 86, now pending before your committee, and of Senate resolution 59, now before the Post-Office Committee of the Senate.

A glance at the act of 1883 will disclose at once that no such readjustment can lawfully be made under it as it now stands. It expressly declares that such readjustments shall "be made in accordance with the mode presented in section 8 of the act of June 12, 1866, and to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business or quarterly returns were made."

Thus, the act expressly negatives the claim that any postmaster can be paid for any quarter on the basis of commissions for that quarter and have the difference between actual salary and commissions for that quarter allowed him. It expressly commands a readjustment to operate prospectively, computed on differences between actual salary and the commission basis for preceding time. It thus virtually commands a readjustment under the system of 1864—the future salary on the basis of past results of business—rather than a substitution of commissions for a given period, where that would yield for the same period more than a tenth of the salary actually allowed for the same period. It does not command the payment of differences between salary and commissions for a given period covered by the returns, but a readjustment to take effect at a subsequent date and operate in a succeeding period.

The same effect is given to the act of June 12, 1866, by the Supreme Court in McLean's case (95 U. S., 750). The court, after citing the acts of July 1, 1864, and June 12, 1866, say: "From a review of

these statutory provisions it appears plainly that, after a salary of a postmaster has been fixed, a readjustment by the Postmaster General must be made before it can be increased, and the readjustment takes effect in all cases prospectively."

Proceeding, therefore, upon the construction of the laws as interpreted by Judge Gresham and Attorney General Brewster, both jurists of eminent ability and entire disinterestedness in this matter, the Department has assumed that the object of the law was not to abrogate or abandon the system of biennial readjustment for prospective periods on the basis of past receipts, and was not intended to return to the retroactive allowance of commissions for each quarter on the basis of that quarter, and has made a review of salary, up to the 19th of March ultimo, as I am informed, in some 24,875 cases. Of this number, 9,358 claims have been allowed, the aggregate of such allowances being $548,874.44, and 15,518 cases have been disallowed. Of the claims disallowed a large number would probably be allowable under the construction contended for by the complainants. Of the number disallowed a part are disallowed because returns are lacking and part because the returns fail to show for the period covered by the computation a difference of 10 per cent. between salary allowed on the basis of the act of 1864 and the commission basis of 1854. How many disallowances result from the methods pursued in which the methods contended for would yield an increase to be now paid, it is impossible to estimate without a reexamination of all the disallowed cases, a labor that would require weeks of time and a numerous detail of clerks, as I am advised by the chief of division in charge of that work.

Under the method of readjustment adopted as advised by the Attorney General, an illustration of the process is shown by the statement herewith submitted and marked Exhibit C. By that process it will be seen that where a postmaster makes application for readjustment of the salary allowed him between July 1, 1868, and July 1, 1870, the procedure is to ascertain the postages sold during the eight quarters preceding July 1, 1868. Commissions under the act of 1854 are computed on these receipts. The average of these receipts for one year are compared with the annual salary allowed for the two years after July 8, 1868, and if the commissions would show an increase of 10 per cent. more than the salary allowed for the two succeeding years, then the difference is added to that salary. Thus it happens that each readjustment for a given two years is
54 made upon the returns for the preceding two years, and is disallowed when those returns are lacking, incomplete, or when they show less than 10 per cent. difference.

The circular of the Department, of which you request a copy, is herewith submitted, marked as Exhibit D.

In reply to your request for my opinion whether any additional legislation is required upon this subject, I have the honor to suggest that it is very necessary that Congress definitively and unmistakably instruct the Department as to these readjustments. It is evident that much disappointment and dissatisfaction result from the methods of readjustment thus far pursued; interested parties

are fomenting this dissatisfaction, and it has found expression in remarks upon the floor in both houses of Congress. Accusations are made that the Department is studiously nullifying the act of 1883 and depriving many thousands of postmasters of their rights under it. You are threatened with innumerable suits for damages to individuals because of your refusal to change the system of readjustment adopted by your predecessor after such painstaking endeavor to find the meaning of this legislation and conform to it. To change the rule adopted as a compliance with the law will introduce great confusion in the Department and entail years of labor in a reconsideration of claims already disposed of and for payment of part of which Congress has already appropriated $223,695.03 (see 23 Stat., pp. 248, 476). A list of allowed claims under this act, numbering 3,828, and amounting to $291,282.68, has also been reported to the present Congress by the Secretary of the Treasury for appropriation at the present session upon readjustments already had. If the construction of the act on which these allowances are made is to be overturned the appropriation upon the list now before Congress should be suspended for review under such instructions as Congress may see fit to give.

It will readily be seen that after Congress had made the two appropriations above cited, thus impliedly giving sanction to the method of readjustment by which the claims covered by the appropriations were readjusted, you were not justified in changing the method of readjustment adopted after such careful consideration, and such change would have caused inextricable confusion; and it is manifest that much annoyance, both to Congress and to the Department, will be caused by complaints and grievances of those who are disappointed by the procedure now followed, and that it is the duty of Congress before going farther to set at rest all controversy regarding the meaning of the law and the duty of the Postmaster General under it.

I beg leave to suggest that the provisions of bill H. R. No. 6993 offer the most satisfactory solution of the vexed question. Briefly stated, this bill ratifies and confirms past action, both by the Department and Congress, and directs the same method for future readjustments.

The joint resolutions above referred to (House resolution 86 and Senate resolution 59) are, in my judgment, open to grave objections.

(1.) They declare the intent and meaning of the law in direct opposition to its express terms.

(2.) They provide a rule of construction which can be operative only *in futuro*.

(3.) They give no direction or instruction as to claims already acted on and paid, and make no provision for the disposal of the claims already sent to Congress for appropriation at the present session, but leave some 10,000 and upwards of claims already disposed of in a state of confusion to vex Congress and the Department hereafter.

The instructions to be given this Department, I respectfully sub-

mit, should cover the whole subject and put an end to controversy. If a different rule from that now followed is to be prescribed to the Department it is very desirable that it provide for a review of cases hitherto disposed of as well as those not yet reached, and should be made with the knowledge that appropriations will be largely increased thereby.

I sincerely hope that Congress will take such definite action as will clearly point out your duty under the act of 1883, either to proceed in the path hitherto pursued or in such other course as Congress may deem advisable, which I trust shall be plain and specific and provide for all cases; and I need not remind you that delay on the part of Congress in so doing will only add to the confusion and labor of the Department, as well as to misappropriation of moneys, if the rule adopted by the Department is to be repudiated by Congress.

I had hoped that some legal proceeding would be instituted to the end that a judicial interpretation of the acts of 1883 and of 1866 might be obtained settling the points in controversy, but no such proceedings have been taken by those who should bring them. It appears to be for the interest of the attorneys, profiting largely from these appropriations, to obtain as much as possible under the present system of readjustment and then to procure such action from Congress as shall open up another large list of claims and require the work of readjustment to be gone over again.

Very respectfully,

EDWIN E. BRYANT,
Assistant Attorney General, Post Office Department.

55

POST OFFICE DEPARTMENT,
WASHINGTON D. C. —— 16, 1886.

I certify that the annexed are true copies taken from the files and records of this Department.

In testimony whereof I have hereto set my hand and caused the seal of the Post Office Department to be affixed the day and year above written.

[SEAL.]

WM. F. VILAS,
Postmaster General.

Filed Nov. 10, 1886.

EXHIBIT A. Filed Nov. 10, 1886.

Statement of the Claim of J. K. McLean, Formerly Postmaster at Florence, Kansas.

POST OFFICE DEPARTMENT,
OFFICE OF THE FIRST ASSISTANT POSTMASTER GENERAL,
SALARY AND ALLOWANCE DIVISION,
WASHINGTON, D. C., *August* 10, 1886.

1st. Application was filed April 14, 1883, through Harvey Spalding, att'y-at-law, of Washington, D. C.

2d. Claim was reviewed July 2, 1884.

56 3d. Claimant was notified nothing due Oct. 2, 1884.
4th. Period of service covered by the application from ——.
5th. April 14, 1871, to July 1, 1874.
6th. Period served by J. K. McLean, from April 14, 1871, to November 12, 1872.
7th. George D. McLean, his successor, took charge of the office November 13, 1872.
8th. Under date of Dec. 24, 1885, the hon. auditor of the Treasury for the P. O. Dep't referred letter from Hon. S. R. Peters, M. C., relative to this case.
9th. January 5, 1886, Hon. A. G. Stevenson, 1st Ass't P. M. Gen'l, wrote Hon. S. R. Peters, giving full information as requested.

EXHIBIT B. Filed Nov. 10, 1886.

Copy. Jacket No. 1.

(Form No. 1202. New series, April, 1881.)

OFFICE OF THE FIRST ASS'T P. M. GEN'L,
SALARY AND ALLOWANCE DIVISION, *April* 14, 1883.

Florence, late Doyle, Marion Co., Kansas.

Brief.

57 J. K. McLean, P. M., from April 14, 1871, to July 1, 1874, makes application for a review and readjustment of his salary as P. M. under the provisions of the act of March 3, 1883.
Address of claimant: Florence, Marion Co., Kansas.
Claimant notified nothing due, 10, 2, '84.
Dec. 24, '85.—Auditor refers letter from Hon. S. R. Peters relative to case.
Jan. 5, '86.—Wrote Hon. S. R. Peters, giving information.
Aug. 10, '86.—Ass't Att'y Gen'l E. E. Bryant asks for full information relative to this case.
Aug. 11, '86—See Jacket No. 2.

Review of the Adjustments of the Salary of P. M. under Acts of 1854, 1864, 1866, *and March* 3, 1883. *From July* 1, 1872, *to July* 1, 1874. *Computation.* 70. *Receipts.* 72.

Stamps	1,088 23
Letter postage	8 59
Newspaper postage	28 65
Box rents	70 20

58 *Compensation.*

535.97, @ 60 per cent.	321	58
589.50, @ 50 per cent.	294	75
Box rent	70	20
Total compensation for 2 years	686	53
Average compensation for 1 year	343	26
Total salary allowed for 2 years	1.120	
Average " " " 1 year	560	

An increase of — per cent.

Ordered that $ ——, being ten per cent., or more than the compensation heretofore allowed the P. M., as shown by the above computation, be allowed in accordance with the requirements of the acts of 1866 and March 3, 1883.

—— ——,
First Ass't P. M. General.

By direction of P. M. General.

EXHIBIT "C." Filed Nov. 10, 1886.

Copy.

(Form 1224.)

Post office, Florence, late Doyle, State, Kansas.

Period.	Stamps and envelopes sold.	Letter postage.	Newspaper postage.	Box rents.	Salary allowed.	Remarks.
	Dollars. Cts.	*Dollars. Cts.*	*Dollars. Cts.*	*Dollars. Cts.*	*Dollars. Cts.*	
Quarter ending Sept. 30, 1870	4 45		35		72 74	McLean, J. K.
" " Dec. 31, 1870	9 80		80		140 —	
" " Mar. 31, 1871	19 13		1 44		65 48	McLean, G. D., Nov. 13.
" " June 30, 1871	156 25	3 87	57		74 57	
" " Sep. 30, 1871	1 67				140 —	
" " Dec. 31, 1871	263 59	2 12	4 48	19 20	140 —	
" " Mar. 31, 1872	203 36	1 22	7 48	20 75	140 —	
" " June 30, 1872	211 34	72	6 31	15 75	140 —	
	218 64	66	6 22	14 50	140 —	
Total	1,088 23	8 59	28 65		1,120 —	

60 EXHIBIT D. Filed Nov. 10, 1886.

Copy. Jacket No. 2.

(Form No. 1202. New series, April, 1884.)

OFFICE OF THE FIRST ASS'T P. M. GEN'L,
SALARY AND ALLOWANCE DIVISION, *April* 14, 1883.

Florence, late Doyle, Marion Co., Kansas.

Brief.

J. K. McLean, P. M. from April 14, 1871, to July 1, 1874, makes application for a review and readjustment of his salary as P. M. under the provisions of the act of March 3, 1883.

Address of claimant: Florence, Marion Co., Kansas. (Name of office changed March 13, '71.)

Aug. 10, '86.—Letter from Hon. E. E. Bryant, Ass't Att'y Gen'l for the P. O. Dep't, requesting information.

Aug. 11, '86.—Answered, and gave full information as requested.

Oct. 13, '86.—Ass't Att'y Gen'l E. E. Bryant asks for certified copies of all the papers in the case, & also if any papers have been filed by claimant since January 1, 1886.

61 *Review of the Adjustments of the Salary of P. M. under Acts of* 1854, 1864, 1866, *and March* 3, 1883. *From July* 1, 1870, *to July* 1, 1872. *Computation.* 68. *Receipts.* 70.

	Dollars.	Cts.
Stamps	13	06
Letter postage	—	—
Newspaper postage	4	13
Box rents	—	—
Compensation.		
17.19, @ 60 per cent.	10	31
——— @ 50 per cent.	—	—
——— @ 40 per cent.	—	—
——— @ 15 per cent.	—	—
Box rent	—	—
Total compensation for 2 years	10	31
Average compensation for	5	15
Total salary allowed for 2 years	13	98
Average " " " 1 year	6	99

An increase of — per cent.

Ordered that $——, being ten per cent., or more than the compensation heretofore allowed the P. M., as shown by the above computation, be allowed in accordance with the requirements of the acts of 1866 and March 3, 1883.

——— ———,
First Ass't P. M. General.

By direction of P. M. General.

EXHIBIT "E." Filed Nov. 10, 1886.

Copy.

(Form 1224.)

Post office, Florence, late Doyle, State, Kansas.

Period.	Stamps and envelopes sold.	Letter postage.	Newspaper postage.	Box rents.	Salary allowed.	Remarks.
	Dollars. Cts.	*Dollars. Cts.*	*Dollars. Cts.*	*Dollars. Cts.*	*Dollars. Cts.*	
Quarter ending Sep. 30, 1868			70		70 72	Riggs.
" " Dec. 31, 1868					1 75	
" " Mar. 31, 1869			60		1 75	
" " June 30, 1869	4 36		53		1 75	
" " Sep. 30, 1869			30		25	McLean, Apr. 13.
" " Dec. 31, 1869	89		50		1 48	
" " Mar. 31, 1870	4 94		40		1 75	
" " June 30, 1870	2 87		55		1 75	
			55		1 75	
Totals	13 06		4 13		13 98	

63 EXHIBIT F. Filed Nov. 10, 1886.

Power of Attorney.

Know all men by these presents that I, J. K. McLean, postmaster at Florence, of ——, in the State of Kansas, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Harvey Spalding, of Washington, D. C., my true and lawful attorney for me and in my place and stead, hereby annulling and revoking all former powers of attorney or authorizations whatever in the premises, and to collect my claim for additional pay for services rendered as postmaster at Florence, Kansas, from April 14th, 1871, to July 1st, 1872, and to from time to time furnish any further evidence necessary or that may be demanded, giving and granting to my said attorney full power and authority to do and perform all
64 and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present at the doing thereof, with full power of substitution and revocation, and to receipt and sign all vouchers, hereby ratifying and confirming all that my said attorney or his substitute may or shall lawfully do or cause to be done by virtue hereof.

In witness whereof I hereunto set my hand and seal this 26th day of August, eighteen hundred and seventy-two.

(Signed) J. K. McLEAN. [L. S.]

Two witnesses who can write:

GEO. L. HOVEY.
ALEX. HARPER.

{Stamped: Fifty. 50. U. S. Int. (Washington'-Picture) Revenue. 50 cents.}

STATE OF KANSAS, }
County of Marion, } *ss:*

Be it known that on this 26th day of August, in the year eighteen hundred and seventy-two, before me, the undersigned, a notary public in and for said county and State, personally appeared
65 J. K. McLean, to me well known to be the identical person who executed the foregoing letter of attorney, and, the same having been first read over to him and the contents thereof explained, acknowledged the same to be his act and deed, and that I have no interest, present or prospective, in the claim.

In testimony whereof I have hereunto set my hand and affixed my seal of office the day and year last above written.

[P. Aller, Notary Public, Marion Co., Kansas.]

(Signed) P. ALLER,
Notary Public, Marion Co., Kansas.

Attach certificate of clerk of court.

STATE OF KANSAS, }
County of Marion, } *ss:*

I, J. H. Costello, clerk of the 9th judicial district court of the county and State aforesaid, do hereby certify that P. Aller is a notary public duly commissioned and qualified; that his commission was dated on the 10th day of May, A. D. 1871, and will expire on
66 the 10th day of May, A. D. 1875, and that his signature within written is genuine.

Given under my hand and the seal of said court this — day of ——, A. D. 187–.

[Seal of District Court, Marion County, Ks.]

J. H. COSTELLO, *Clerk.*

EXHIBIT "G." Filed Nov. 10, 1886.

(Form 1) 3.

The honorable the Postmaster General.

SIR: I hereby make application for readjustment of my salary as postmaster at Florence, county of Marion, State of Kansas, covering the period of my service from 14 day of April, 1871, to July 1, 1872, and from —— to —— in accordance with the mode presented in section eight, act of June 12, 1866, agreeably to the provisions of the recent act of Congress upon the subject.

67 My post-office address is Florence, county of Marion, State of Kansas.

I hereby order and direct that draft or check, payable to my order for the amount found due upon such readjustment of salary, be sent to me by mail, addressed as follows.

(Signed) J. K. McLEAN.

Name of applicant: J. K. ——, Florence, Ks.

Post-office address of applicant: J. K. McLean, late postmaster at Florence, care Harvey Spalding, Washington, D. C.

EXHIBIT H. Filed Nov. 10, 1886.

(Form 2.)

The honorable the Postmaster General.

SIR: I hereby make application for readjustment of my salary as postmaster at Florence, county of Marion, State of Kansas, covering the period of my service from April 14, 1871, to July 1, 1874,
68 and from ——, to ——, in accordance with the mode presented in section 8, act of June 12, 1866, agreeably to the requirements of the recent act of Congress upon the subject.

My post-office address is Florence, county of Marion, State of Kansas.

(Signed) J. K. McLEAN,
(Applicant sign here.)
Late Postmaster at Florence.

EXHIBIT "I." Filed Nov. 10, 1886.

1994.

WASHINGTON, D. C., *April* 7, 1883.

To the honorable the Postmaster General.

SIR: Application is hereby made under act March third, 1883, for the readjustment of the salary of J. K. McLean as postmaster at Florence, county of Marion, State of Kans., covering the following period, to wit:

From ——, 186–, to ——, 186–.
From ——, 186–, to ——, 187–.
From Apr. 14, 1871, to July 1, 1872.
From ——, 187–, to ——, 187–.

69 The present post-office address of the claimant is Florence, county of Marion, State of Kans.

Power of attorney from the claimant is herewith filed.

HARVEY SPALDING,
Legal Representative of the Claimant.

Post-office address, 59 Corcoran building, Washington, D. C.

EXHIBIT "K." Filed Nov. 10, 1886.

POST-OFFICE DEPARTMENT,
OFFICE OF THE FIRST ASSISTANT POSTMASTER GENERAL,
SALARY AND ALLOWANCE DIVISION,
WASHINGTON, D. C., *Oct.* 2*d*, 1884.

SIR: In compliance with the acts of Congress approved June 22, 1854, July 1, 1864, June 12, 1866, and the act of March 3, 1883, as construed by the hon. Attorney General of the United States, your application for a readjustment of your salary as postmaster at Florence, Kansas, from July 1, 1872, to November 12, 1872, has

70 been reviewed and it is found that no additional amount is due.

Very respectfully, JAMES H. MARR,
Acting First Assistant Postmaster General.

J. K. McLean, Esqr., Florence, Kansas.

WASHINGTON, D. C., *October* 14, 1883.

Period of service of J. K. McLean, formerly P. M. at Florence, Kansas, covered by his application of April 14, 1883, is from April 14, 1871, to July 1, 1874.

WASHINGTON, D. C., *August* 10, 1886.

—— ——, Florence, Kansas:

NOTE.—The period served by J. K. McLean was from April 14, 1871, to November 12, 1872. Geo. D. McLean, his successor, took charge Nov. 13, 1872.

EXHIBIT "L." Filed Nov. 10, 1886.

Dictated.

HOUSE OF REPRESENTATIVES U. S.,
WASHINGTON, D. C., *Dec. 20th*, 1885.

The sixth auditor of the P. O. Dep't, Washington, D. C.

71 MY DEAR SIR: J. K. McLean was postmaster at Florence, Kansas, from July 1, 1871, to July 1, 1872, and sends me the enclosed affidavit. Please inform me if his claim can be allowed; and, if so, how soon it may be adjusted; or, if it cannot be allowed, state in brief the reasons why, and in such case return the enclosed affidavit.

Very respectfully,
(Signed) S. R. PETERS,
M. C., 7th Dist. Ks.

Dec. 24, '85. Florence, Kansas.

Form 801 A. Aud.

OFFICE OF THE AUDITOR OF THE TREASURY
FOR THE POST-OFFICE DEPARTMENT,
WASHINGTON, *Dec.* 22, 1885.

Respectfully referred to the hon. 1st Ass't P. M. General, and Hon. S. R. Peters, M. C., so informed.

Copy of the letter of Hon. S. R. Peters, M. C., to the hon. auditor of the Treasury for the P. O. D. relative to the McLean case.

(Signed) D. McCONVILLE, *Auditor.*

72 EXHIBIT "M." Filed Nov. 10, 1886.

POST-OFFICE DEPARTMENT,
OFFICE OF THE FIRST ASSISTANT POSTMASTER GENERAL,
SALARY AND ALLOWANCE DIVISION,
WASHINGTON, D. C., *January* 5, 1886.

Hon. S. R. Peters, House of Representatives, Washington, D. C.

SIR: Your letter to the auditor of the Treasury for the P. O. Dep't asking information relative to a review of the salary of Mr. J. K. McLean, formerly postmaster at Florence, Kans., has been referred to this office.

In reply, you are informed that the application of Mr. McLean has been considered, and the claimant has been notified that no additional amount can be allowed.

The returns of the biennial period ended June 30, 1870, are incomplete, and therefore no review can be made for that period.

73 A review of the returns for the succeeding biennial period shows that no additional amount is due under the requirements of the act of March 3, 1883.

As requested, the papers enclosed by you are herewith returned.

Very respectfully,

(Signed) A. E. STEVENSON,
First Ass't P. M. General.

POST-OFFICE DEPARTMENT,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
WASHINGTON, D. C., *August* 10, 1886.

SIR: A petition for mandamus having been filed against the Postmaster General requiring him to show cause why he should not be required by a mandate of the court to readjust the salary of J. K. McLean, formerly postmaster at Florence, Kansas, under the act of March 3, 1883, the Postmaster General direct- that you immediately furnish copies of all orders or actions heretofore taken in respect to the said McLean's salary; a statement of the time
74 when the same was reviewed for readjustment; copies of any orders or letters informing him or his attorney of disallowance thereof, or that nothing was found due; a statement to show the time when he was appointed and held office, and any information relating to his case; the time of the filing of his application; when the salary was reviewed and disallowed—in short, all action taken by the Department upon the case, w-atever its form. This is desired immediately to place before the Attorney General to prepare for the defense in the action.

Respectfully,

E. E. BRYANT,
Ass't Att'y Gen'l, P. O. D.

A. H. Scott, Esqr., chief salary & allowance div., P. O. D.

75 EXHIBIT "N." Filed Nov. 10, 1886.

Copy dictated.

WASHINGTON, D. C., *March 4th*, 1886.

Hon. Wm. F. Vilas, Postmaster General.

SIR: Years ago I complained to Congress that many postmasters serving between 1864 and 1874, whose returns exhibited the fact that they had been allowed salaries much less than they would have received in commissions under the act of 1854, had failed to receive from the Postmaster General a readjustment of their salaries. Three years ago to-day, as a remedy for the wrongs complained of, Congress issued an absolute mandate addressed to the Postmaster General requiring him, upon proper application, to readjust the salaries of postmasters in all such cases.

Between Congress, the "supreme tribunal," and the Postmaster
76 General, upon whom Congress has placed this imperative duty, no officer and no court can interfere. The sole issue involved is obedience to or resistance of the command of Congress by the Postmaster General. The act of March 3, 1883, is a mandate of the highest tribunal, and the order contained in it is in

terms absolute, for it commands the Postmaster General to readjust the salaries of all postmasters of the classes named (who apply) who have been paid salaries ten per cent. less than commissions. It is manifestly impossible that any court can frame a mandate more unmistakable in its meaning.

A refusal on the part of the Postmaster General to obey this mandate in the nature of the case remits every person aggrieved to the courts for personal suits against the Postmaster General for the damages arising from his neglect to obey this mandate.

It would seem that an officer responsible directly to Congress, who refuses to obey an order of Congress, would be likely to
77 disobey an order of a court. Every intimation made that the postmasters complaining have their remedy in the courts necessarily means one of two things, namely, either that the officer refusing to obey the order of Congress is, notwithstanding, willing to obey an order of the court or that such officer expects to answer personally in the courts to each of the postmasters for the damages resulting from his conduct.

Manifestly the disobedience of your predecessor of an order of Congress, or the advice of a law officer to such predecessor to disobey such an order, cannot in any degree justify your own refusal to obey such an order.

When you came into office you found this mandate to be executed, and you found the one and only intent thereof expressed in the language of your predecessor and on record under date of Feb. 16, 1884, and in letters to Senator Morgan, on record under dates
78 of June 2nd and 3rd, 1884. With this record you also found that the mandate of Congress and the orders and letters of your predecessor containing the public declarations of the one and only possible meaning of said mandate had been systematically violated during the time your predecessor held office in this, that the applications of postmasters for readjustment of salary whose returns show that the salaries allowed them were ten per cent. less than commissions had been denied, and in that the salaries of other postmasters had been readjusted and large additional allowances made whose returns showed that they had not been paid salaries ten per cent. less than commissions, but that they had in fact been paid salaries in excess of commissions. In other words, you found that a plain mathematical order of Congress had been systematically subverted.

You must be aware (for it is a simple mathematical prop-
79 osition) that when the two years' business of a postmaster is taken to make a salary for his successor for two years after that, if the business of the successor was much smaller than the business of the predecessor, that such an adjustment of salary is in manifest violation of the law, which orders a readjustment to be made only in such cases where the salary allowed is less than the commissions; and for the same reason you must be aware that to deny a readjustment of the successor's salary, when his returns show that he has received a salary less than the commissions, is in manifest violation of the law, which orders you to make readjustments in all

such cases, for the reason that the salary allowed is less than the commissions. I will illustrate this mathematical proposition by the two cases following:

First Case.

Amount of commissions July 1, 1864, to July 1, 1866 ..... $24
80 Amount of pay July 1, 1864, to July 1, 1866 24
Name of postmaster, "Smith."
Commissions July 1, 1866, to July 1, 1868 ..... $2,000
Amount of pay " " " 24
Name of postmaster, "Brown."

In this case the mandate of Congress requires you to readjust "Brown's" salary, for the reason that his pay is ten per cent. less than commissions; but under the scheme of reviews of biennial adjustments, act of 1864, you refuse to readjust "Brown's" because the salary paid him, namely, $24, is equal to the commissions on "Smith's" business several years before that.

Second Case.

Commissions 1864 to 1866 ..... $2,000
Pay " " 2,000
Name of postmaster, "Adams."
Commissions 1866 to 1868 ..... $24
Pay 1866 to 1868 24
Name of postmaster, "Luck."

Under the mandate of Congress neither "Adams" or "Luck" are entitled to a readjustment of salary, for the manifest reason
81 that each has been paid a salary equal to the commissions; but under the scheme of reviews of biennial adjustments, under the act of 1864, you will give "Luck" $1,976 additional pay, all of which is in excess of his commissions, for the reason that the commissions on the business of his predecessor, "Adams," years before that exceeded "Luck's" pay $1,976.

Such a system as this, which is in manifest subversion of law, must, in the nature of things, come to an end, and the longer that it shall be continued the more disasterous will that end be.

Since you came into office I have not ceased to reflect upon this grave subject, and I have in every legitimate way endeavored to bring it to your consideration in order that you might come to see this great wrong as it is, and so by your own act put an end to it.

If you refuse to do this it seems to me inevitable that by
82 your own act you will compel these thousands of wronged people to institute suits against you for damages.

At the same time it is manifest that if you will submit the facts of the "McLean" case, which facts exhibited to Congress the class of evils to remedy which Congress issued the mandate of March 3, 1883, to the Attorney General for his opinion as to whether by said mandate you are required to readjust McLean's salary, whatever

embarrassment you may have labored under in consequence of your predecessor's action will be removed.

I herewith enclose and address to you, with a statement of the "McLean case," a letter I addressed to Hon. E. E. Bryant on the 13th of February upon this subject.

This letter Mr. Bryant returned to me with the statement that he could only consider the subject of the letter upon reference of the same to him by yourself or the First Assistant Postmaster General.

Respectfully,

(Signed) HARVEY SPALDING, *G. C. C.*

83 EXHIBIT N½.

WASHINGTON, D. C., *March* 30, 1886.

Hon. Wm. P. Vilas, Postmaster General.

SIR: On the 16th instant I made demand upon you (upon the written applications of the persons entitled) that you readjust, under the act of March 3, 1883, the salaries of certain postmasters and late postmasters of the three classes named in said act in the State of Alabama.

I know make peremptory demand upon you that you (in compliance with the requirement of said act) readjust the salary of each and every one of the postmasters of the 3rd, 4th, and 5th classes, application for which readjustment in each case I now present to you from the Territory of Arizona, from the States of Arkansas, California, Colorado, Connecticut, Dakota Territory, the States of
84 Delaware, Florida, Georgia, Idaho Territory, the States of Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana Territory, the States of Nebraska, Nevada, New Hampshire, New Jersey, New Mexico Territory, the States of New York, North Carolina, and Oregon.

There are several thousand- of these applications, and under your direction they are lodged in the hands of Mr. A. H. Scott, chief of the salary and allowance division. In each case the returns of the postmaster were made in full compliance with the law and regulations, and show that the salary allowed was ten per cent. less than it would have been on the basis of commissions under the act of 1854, and no readjustment of salary in any of the cases has been made under the act of June 12, 1866.

The Supreme Court of the United States having decided
85 that postmasters in such cases cannot recover the additional salary claimed until a readjustment thereof shall be made by the Postmaster General, and Congress, in consequence of said decision, having by the act of March 3, 1883 (22nd Statutes, page 487), ordered the Postmaster General, upon application in writing, to make a readjustment of salary in every such case, a refusal by the Postmaster General to make such readjustment of salary when written application is presented to him for such purpose manifestly renders himself personally liable in damages to the applicant

for the amount of the salary which by his refusal to make the readjustment he deprives such applicant, for without such readjustment of salary the applicant can in no case enforce the right vested in him by said act.

I therefore notify you that in every one of the cases which I hereby present to you from the above-mentioned States and
86 Territories in which you may fail or refuse to make the readjustment of salary hereby demanded of you that suits will be instituted against you in the proper courts to recover the full amount of damages resulting from your refusal to make such readjustments of salary.

Respectfully,

(Signed) HARVEY SPALDING,
Attorney for Applicants Mentioned.

E. E. B.

87 EXHIBIT "O." Filed Nov. 10, 1886.

WASHINGTON, D. C., *Aug.* 4, 1886.

Hon. Wm. F. Vilas, Postmaster General.

SIR: I herewith present to you the application of J. K. McLean, who was a fifth-class postmaster at Florence, Kansas, from April 14, 1871, to June 30, 1871, and from July 1st, 1871, to July 1st, 1872, for readjustment of his salary under chapter 114 of the laws of 1883 (U. S. Statutes at Large, vol. 22, page 487).

If paid upon the basis of commissions under the act of 1854 he would have received for the quarter ending June 30, 1871, $87.12, whereas he was paid only $1.48. If paid upon the basis of commissions under the act of 1859 he would have received $568.64 for the year ending June 30, 1872, and he was allowed and paid a salary of $7.00 for that year.

I hereby make peremptory demand upon you that in obe-
88 dience to the requirements of said act and in conformity to the rights of J. K. McLean that you readjust his salary as such postmaster upon the returns preceding the biennial readjustment of July 1, 1872.

Respectfully, HARVEY SPALDING,
Att'y for J. K. McLean.

Together with the preceding demand and at the same time the following letter was delivered to the Postmaster General:

(Copy.)

WASHINGTON, D. C., *Aug. 3rd*, 1886.

Hon. Wm. F. Vilas, Postmaster General.

SIR: On the 4th of March, 1886, I presented to you a statement of McLean's case with what I then considered and now consider his just grounds of complaint for non-adjustment by you of his salary as postmaster at Florence, Kansas, in 1871 and 1872.

In an interview I had with you shortly after this communi-
89 nication you communicated to me orally your refusal to re-adjust McLean's salary, and you suggested to me that the demand therefor be made in writing, and that you would endorse your refusal upon such demand in writing, and that thereupon McLean's right to a readjustment of salary could be judicially determined by proceedings against you for a writ of mandamus.

This demand is now made upon you in pursuance of your suggestion upon the subject.

Respectfully,

(Signed) HARVEY SPALDING.

Served Aug. 4, 1886.

90 *Replication.*

In the Supreme Court of the District of Columbia. Nov., 1886.

UNITED STATES & McLEAN *v.* VILAS, Postmaster General. } At Law. No. 27092.

The relator, McLean, joins issue upon the defendant's answer so far as the same is contradictory to any allegation of fact made in the petition.

H. SPALDING,
S. F. PHILLIPS,
For McLean.

91 MONDAY, *October 4th*, 1886.

Proceedings before the Supreme Court of the District of Columbia, sitting in general term, commencing on the first Monday, fourth day, of October, 1886.

Present: Chief Justice Cartter and Justices Cox and Merrick.

SATURDAY, *November* 20, 1886.

Session resumed pursuant to adjournment.

Present: Chief Justice Cartter and Justices Cox and Merrick.

THE UNITED STATES OF AMERICA *ex rel.* J. K. McLEAN, Plaintiff, *vs.* WILLIAM F. VILAS, Defendant. } At Law. No. 27092.

Because it appears to the court here that the pleadings in this cause disclose no ground for the interposition of this court therein, it is considered that the petition be, and it is hereby, dismissed, and that the petitioner pay the costs of the cause, to be stated by the clerk, and that the defendant have execution therefor.

92 *Statement of Facts. Filed Mar.* 21, 1887.

In the Supreme Court, District of Columbia.

UNITED STATES *ex rel.* J. K. MCLEAN
vs.
WILLIAM F. VILAS, Postmaster General. } Law. No. 27092.

The parties admit as follows:

1. That the relator was postmaster at Florence, Kansas, beginning April 14, 1871, to June 30, 1872, inclusive, and afterwards, and that for his services therein between the dates above mentioned he was allowed for compensation in full one and $\frac{48}{100}$ dollars, and for each of the four quarters ending Sept. 30, 1871, Dec. 31, 1871, March 31, 1872, and June 30, 1872, he was allowed one and $\frac{75}{100}$ dollars, or for the whole of such service eight and $\frac{48}{100}$ dollars.

2. That Exhibit "C" attached to the answer correctly states the quarterly returns made by McLean as postmaster and the
93 amounts therein accounted by him for envelopes and stamps sold, letter postage, newspaper postage, and box rents during the terms aforesaid, being in the aggregate as follows:

For the quarter ending June 30, 1871	$163 36
For the quarter ending Sept. 30, 1871	289 39
For the quarter ending Dec. 31, 1871	232 81
For the quarter ending March 31, 1872	234 12
For the quarter ending June 30, 1872	240 02

3. That the said post office had, prior to March 13, 1871, been known as Doyle, one Riggs being postmaster, and on that date, by order of the Postmaster General, the site was changed one mile to Florence, the name of the post office changed to Florence, and the relator appointed postmaster, and that the quarterly returns rendered for the post office named as Doyle for the quarters ending June 30, 1870, Sept. 30, 1870, and Dec. 31, 1870, were not sworn
94 to, but said McLean, relator, rendered returns for the period covered by his claim in due manner and form.

4. That the relator duly performed all his duties as postmaster.

5. That he is the same person who was plaintiff in the case entitled McLean *vs.* The United States, reported 95 U. S., p. 750.

6. That Exhibits "G" & "H" (the answer) correctly sets out the applications made in 1883 by the relator to the Postmaster General for readjustment of salary.

7. That Exhibit K to the answer correctly sets out the decision made and the notice given to the relator in consequence of such application.

8. That no application for a readjustment, etc., to the defendant, as Postmaster General, has been made by the relator, except as set forth in Exhibit N and N^2, until August 4th, 1886, which application is set — in Exhibit O, and that such applications were for action by the

95 defendant upon an application made as above in 1883 to a predecessor in the office of Postmaster General and which had been reviewed in due order of business during the term of office of such predecessor and the determination made that nothing was due thereon, as shown by Exhibit K as above, which, by the rule of administration then pursued, was the manner of disposing of cases where nothing was determined to be due upon such review for readjustment.

9. That no action was taken upon the letters of the relator's attorney of date March 4th, 1886, and March 30, 1886 (Exhibits N and N^2), nor upon his demand of August 4, 1886 (Exhibit O).

10. That no application was, in fact, filed with said letter of March 30, 1886, for the readjustment of the said relator's salary nor presented therewith.

E. E. BRYANT,
Of Counsel for Def't.
S. F. PHILLIPS,
For the Relator.

96 *Petition. Filed May* 23, 1887.

In the Supreme Court of the United States, at Chambers, May —, 1887

J. K. McLEAN on the Relation, &c.,
vs.
WILLIAM F. VILAS, Postmaster General. } No. 27092.

Petition for mandamus in the supreme court of the District of Columbia.

To the honorable the Chief Justice of the Supreme Court of the United States:

The petition of J. K. McLean aforesaid respectfully sheweth—

I. That at the present term of the supreme court of the District of Columbia judgment has been rendered dismissing his petition in the cause above entitled.

II. Herewith he presents a copy of the record of the proceedings therein and assigns for error upon the case so made the decision that he was not entitled to the writ of mandamus prayed for.

97 III. Your petitioner shows to your honor further that the question of law involved in such alleged error concerns the interests of more than one thousand persons, ex-postmasters, who reside in many different States and Territories, and are in like case with himself, and who have presented claims for like relief before the Postmaster General, and also that in all such claims amount to more than one hundred thousand ($100,000) dollars.

He therefore prays that your honor will allow to him a writ of error, returnable into the Supreme Court of the United States, under section 706 of the Revised Statutes.

And your petitioner will ever pray, &c., &c.

J. K. McLEAN,
By HARVEY SPALDING, *Attorney.*

S. F. PHILLIPS, *Of Counsel.*

DISTRICT OF COLUMBIA, *ss:*

Upon this 14th day of May, 1887, appeared before me Harvey Spalding, above named, and made oath that he has read and
98 understood the above petition, and that the matters therein alleged are well known to him and are true.

HARVEY SPALDING.

Subscribed and sworn to before me, Rufus H. Thayer, a notary public in and for the said District.

[SEAL.] RUFUS H. THAYER,
Notary Public.

In the Supreme Court of the United States, at Chambers, May 19, 1887.

To the clerk of the supreme court of the District of Columbia:

Upon considering the above petition I have allowed the writ of error prayed for, and you are hereby directed to issue the same according to law.

M. R. WAITE,
Chief Justice U. S.

99 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because in the record and proceedings as also in the rendition of a judgment in a plea which is in the said court before you, between The United States of America *ex relationi* James K. McLean and William F. Vilas, Postmaster General, being No. 27092, at law, a manifest error hath happened, to the great damage of the said relator, as by his complaint appears, and it being fit that the error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf: Therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 1st day of June, in the year of our Lord 1887, and of the Independence of the United States the one hundred and eleventh.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*

Service admitted June 10th, 1887.

WM. F. VILAS,
Postmaster General.

DISTRICT OF COLUMBIA, *To wit:*

To William F. Vilas, Postmaster General:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein The United States *ex rel.* James K. McLean is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected so that speedy justice be done the parties in that behalf.

Witness E. F. Bingham, chief justice of the said supreme court of the District of Columbia.

[Seal Supreme Court of the District of Columbia.]

E. F. BINGHAM,
Chief Justice.

100 *Filed Jun.* 1, 1887.

In the Supreme Court of the District of Columbia, the 27th day of May, 1887.

THE UNITED STATES OF AMERICA *ex rel.* JAMES K. McLEAN
vs.
WILLIAM F. VILAS, Postmaster General.
} At Law. No. 27092.

In error.

Know all men by these presents that we, James K. McLean, Harvey Spalding, and George Mason, are bound unto the above-named William F. Vilas in the sum of three hundred dollars, to be paid to the said William F. Vilas, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 27th day of May, 1887.

Whereas the above-named James K. McLean has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named James K. McLean shall prosecute his said writ of error to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAMES K. McLEAN. [SEAL.]
HARVEY SPALDING. [SEAL.]
GEO. MASON. [SEAL.]

Sealed and delivered in presence of—
R. T. BATTEY,
T. J. CONRY,
As to James K. Lean.

Sealed and delivered in presence of—
RUFUS H. THAYER,
F. G. COLDREN,
As to Harvey Spalding and George Mason.

Approved:
E. F. BINGHAM,
Chief Justice.

101 *Clerk's Certificate.*

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing 100 pages of writing together constitute a true copy of the originals on file and of record in the law case of The United States *ex rel.* J. K. McLean, plaintiff, *vs.* Wm. F. Vilas, Postmaster General, defendant, No. 27092, at law, and that said originals together — the entire record in said case.

Witness my hand and the seal of said court this 15th day of June, A. D. 1887.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS,
Ass't Clerk.

Endorsed on cover: District of Columbia supreme court. No. 1041. The United States *ex rel.* James K. McLean, plaintiff in error, *vs.* William F. Vilas, Postmaster General. Filed September 9, 1887.

IN THE

Supreme Court of the United States.

October Term 1887.

THE UNITED STATES, EX REL. J. K. MCLEAN,
vs.
WM. F. VILAS, Postmaster General. } No. 1041.

Motion to Advance.

This case is one in which a postmaster asks for a mandamus requiring the Postmaster General to *readjust* certain salaries, in accordance with acts of Congress.

The details of the petition are substantially such as are mentioned in the opinion in McLean's case, 95 U. S., 750. *There*, the present plaintiff had brought suit in the Court of Claims for a balance of salary. But it was decided that until a *readjustment* of salaries had been made by the Postmaster General, as required by the Statute, an ordinary suit would not lie; and the Court remarked (p. 753) that, supposing the case to be as stated by the claimant, "If the executive officer failed to do his duty, he might have been constrained by a mandamus."

The present suit involves the interests of many respectable citizens in various parts of the country, who are of a most unobtrusive class, seldom seen in courts of justice.

This motion is predicated mainly upon the circumstance that the present remedy, which apparently is the only one open to the claimants, must be prosecuted to an end before the gentleman who has been made defendant ceases to be Postmaster General, or otherwise it will fail, no matter how just may be the claim involved therein. (122 U. S., 643.)

Upon application in the present connection, made some weeks since to the Attorney General, he has recently authorized the undersigned to state that he has no objection to such advancement.

S. F. PHILLIPS,
H. SPALDING,
For Plaintiff in Error.

October 31, 1887.

Supreme Court of the United States.

OCTOBER TERM, 1887.

No. 1041.

THE UNITED STATES EX REL. McLEAN

vs.

VILAS, POSTMASTER GENERAL.

BRIEF FOR THE RELATOR.

H. SPALDING, *Attorney.*

S. F. PHILLIPS, *Of Counsel.*

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1887.

No. 1041.

THE UNITED STATES EX REL. McLEAN

vs.

VILAS, POSTMASTER GENERAL.

BRIEF FOR THE RELATOR.

The relator, *McLean*, was postmaster at Florence, Kansas, in 1871–'2, and after various other efforts to secure certain compensation for his services, brought this petition before the supreme court of the District of Columbia August 4, 1886, in order to obtain the "readjustment" of that compensation, which by statute is required in order to *ascertain* his claim upon the Treasury.

After *answer* by the Postmaster General, and *replication*, upon the *hearing* the petition was *dismissed*.

The relator now assigns such dismissal as *error*.

In detail the case is as follows:

The [amended] *petition* (pp. 4, &c.) states that McLean was postmaster at Florence, as above, from April 14, 1871,

to June 30, 1872, and that during such time he regularly and fully discharged his duties, and made full *returns* to the Auditor at the end of each quarter.

It then sets out the result of such returns for each of the five quarters in which he was postmaster, as showing that "upon the basis of the statute of 1854" he would have been entitled to $662.33; whereas the compensation actually received by him for the first of such five quarters was $1.48, and for each of the other four quarters was $1.75; or, in all, for the time of his service as above, was $8.48.

The petition then refers to the suit brought by himself, reported in 95 U. S. (p. 750); and also to the provisions of the act of 1883, ch. 119, and thereupon alleges an application for "readjustment" in form as required by the latter statute, made by himself in 1883, to the then Postmaster General, and afterwards renewed to the respondent.

It ends with an allegation of a refusal by the respondent, and prays for a mandamus.

The *answer* begins with alleging seven reasons why in point of law the respondent is not liable to coercion by mandamus.

It then proceeds to assign two reasons to show that the petitioner is not entitled to the "readjustment" claimed, viz:

1. He had not made *returns* for a sufficient number of quarters during the period of his holding office. A point which had been decided by the predecessor of the respondent, in office at the time of the application. (Folio 22.) [It appears in the sequel that such "*necessary*" number of quarterly returns was supposed to be *eight*.]

2. The case in 95 U. S. decided that the relator had no right to a greater salary during his term of office than what he has received. (Folio 23.)

The answer further relies (folios 24, &c.) upon certain

opinions of Postmaster General Gresham and Attorney General Brewster to the same effect, and (folio 28) upon the decision made after an examination and readjustment, and before the incumbency of the respondent, that the petitioner was entitled to no further allowance for salary, which decision was made substantially for (among others) the reasons given in 95 U. S.; and thereupon the respondent submits that he cannot be compelled by the court to review or overrule such decision of his predecessor.

The respondent then alleges that the only application that has been made to him for such readjustment is a demand by the relator's attorney to reconsider and overrule the decision of his predecessor as aforesaid.

He concludes by referring to an act of August 4, 1886, as having the effect of *approving* the former action of the Postmaster General in these matters,—of *forbidding* the respondent to change the same, and of *barring* the claim of the petitioner, and all claims like it.

Some fifteen exhibits are appended to this answer.

The parties (p. 54) put upon record certain *admissions* of fact, substantially as follows:

1. *McLean* was postmaster as stated, and for his services received in all, $8.48.

2. *Exhibit C* correctly sets out McLean's quarterly returns, &c.

3. Prior to March 13, 1871, the post office at *Florence* had been located at *Doyle*, a mile therefrom; another man having been postmaster, who did not make sworn returns, although McLean did make returns in due manner and form.

4. McLean duly performed all his duties as postmaster.

5. He is the *McLean* who was plaintiff in the case reported 95 U. S., p. 750.

6. *Exhibits* 9 *and* 14 correctly set out the applications by the relator in 1883.

[Of these "G" (p. 45) is a regular and formal application under the act of 1883 (probably upon a departmental *blank*), undated, but said in the *answer* (folio 27) to have been made April 14th, 1883; "H" (p. 45) is an application upon another *form*, also undated and apparently unimportant here.]

8. No application to the respondent for readjustment has been made by the relator, except as appears in Exhibits N and N[2] [½], until August 4, 1886 (Exhibit O), and these were for action upon the application made in 1883, and determined in 1884, by a predecessor of the respondent.

[Exhibit N, pp. 48, &c., is a letter signed "Harvey Spalding, G. C. C.," addressed to the respondent as Postmaster General, dated March 4, 1886, making general complaint of the manner in which McLean, &c., had been treated, and suggesting that by refusal to readjust, &c., the respondent would be liable to suit for damages.

Exhibit N½ [2] (pp. 51, &c.), is also a letter addressed to the respondent, dated March 30, 1886, and signed by "Harvey Spalding, attorney for the applicants mentioned." After referring to a demand for readjustment made upon the respondent by said attorney, "upon the written applications of the persons entitled," it makes "peremptory demand" in each case "I now present to you." Amongst them are specified cases from "Arizona, * * Kansas, * *. There are several thousand of these applications, and under your directions they are lodged in the hands of Mr. A. H. Scott, chief of the salary and allowance division."

This letter renews the above threat of a suit for damages, &c.

Exhibit O (p. 52, &c.) contains two letters to the respondent from "Harvey Spalding, attorney for J. K. McLean"—(1) dated Aug. 4, 1886 (the day upon which the petition for mandamus was filed), making peremptory demand, &c.; and (2) dated Aug. 3, 1886, but said to have been delivered Aug. 4, 1886, along with the former letter; and making reference to certain correspondence and interviews.]

9. No action was taken upon the letters dated March 4 and March 30, 1886 (Exhibits N and N²), or upon the demand of August 4, 1886 (Exhibit O).

10. No application for readjustment was in fact filed or presented along with the letter of March 30, 1886.

The statutes necessary to be considered in this case will be found in the Appendix to this Brief.

From these it will be seen that from the beginning of the Government (act of 1792) up to 1864, postmasters were compensated by commissions allowed at the close of each quarter, upon the amounts by them then returned as received for postage, &c. The last act which contained such provisions was that of 1854, ch. 61.

An act passed in 1864 changed this routine, by providing a system in which, in general, postmasters (who were to be divided, according to amount of compensation received, into five *classes*) were to be paid by salaries, to be *adjusted* for the two years immediately after July 1, 1864, upon the average annual compensation allowed for the eight quarters immediately preceding that date; and to be *readjusted* in like manner for succeeding periods of two years each. Provision was made also for cases in which a post office might not have been in existence for two years; and for other *special* cases, in which latter the Postmaster General might, in his discretion, readjust *oftener* than once in two years.

An act passed in 1866 modified the act of 1864 by making a new provision for postmasters belonging to the 3d, 4th, and 5th classes.

Finally, an act passed in 1883 renewed the directions of the act of 1866 as regards certain of the postmasters who had been included in the latter.

[As matter of history it may be added that in June, 1872, a statute of that date retained substantially the provision of the act of 1866; and in 1874 that was dropped for all future transactions.]

More particularly,

The act of 1864, by its first *section*, divided postmasters and their offices, exclusive of the postmaster and office at New York, into five classes, and fixed these classes for the two years next after July 1, 1864, according to the average compensation received by them, respectively, "for the two consecutive years next preceding" that day, viz:

1. Postmasters who then had received "an average annual sum not less than $3,000" were to be of the *first* class.

2. If they had then received less than $3,000 but not less than $2,000 they were to be of the *second* class.

3. If less than $2,000 but not less than $1,000, the *third* class.

[In each of the above-mentioned classes the prospective salaries were also to be fixed in *even hundreds* of dollars.]

4. Such postmasters as had received as above less than $1,000 but not less than $100, were to be of the fourth class.

These were to have salaries fixed in *even tens* of dollars.

5. Postmasters who had received less than $100 were to be of the fifth class; and these were to have salaries in *even dollars.*

The above arrangement covered only the two financial years that were *then* to expire on the 30th of June, 1866.

Section 2 of the same act, however, provided for all subse-

quent periods of two years, and also for "special cases," as follows:

"That the Postmaster General shall review once in two years (and in special cases upon satisfactory representation, as much oftener as he may deem expedient), and readjust, on the basis of the preceding section, the salary assigned by him to any office."

"The basis of the preceding section" was, of course, for *ordinary* biennial readjustments, (1) certain "*classes*," having peculiar incidents, and (2), the "compensation" during the preceding two years ending with June 30.

By "compensation" was meant, as regarded the first adjustment in 1864, *That which had been actually received as commissions* during the two years before; but for subsequent readjustments, of course only *What might so have been received as commissions* if the scheme of percentages provided in the act of 1854 had still created "compensation" and not merely, as after the statutes of 1864 it did, *a basis* for fixing compensation. That is, at the biennial readjustment of salaries for the two years beginning with July 1, 1866, and so thereafter, the Postmaster General was to consult the quarterly returns of the postmasters since July 1, 1864, &c., and apply thereto the statutory schedule of commissions, even although under section one of the same statute they could not of course have received *compensation* in that way.

But for the "special cases" mentioned in section 2, the "*basis*" of section 1 could scarcely have been meant to be returns for *an immediately preceding biennial period beginning with July 1 and ending upon June 30.* Such period is evidently one of the main elements in "the basis of the preceding section." There could be no such period in any year except as regards quarterly returns made just after June 30.

It is submitted that under section 2, "in special cases," the Postmaster General, in his discretion, *might have readjusted upon returns for one quarter* only. And, also, that he might

so have readjusted by *decreasing* salaries, as well as by *increasing*.

It must be borne in mind that the atmosphere (the "*place*" into which the person called upon to construe this statute is required by the ordinary *canon* to place himself), which, in 1864, surrounded persons ascertaining the *compensation* of postmasters, was (as since 1792 it had always been) one of *official action from-quarter-to-quarter*.

If, therefore, subsequently to the biennial adjustment for the two years beginning July 1, 1866, it had, for instance, upon the 1st of January, 1867, appeared by the returns for the then just past *two quarters*, that the salary paid for that time had been much too small, the Postmaster General in his discretion could have increased it with reference to such returns; and also, that if the returns on the 1st of April afterwards had shown a change greatly the reverse, he might have readjusted anew upon the basis of the then just past *one quarter*.

The *normal unit* for adjusting such compensations had so long been *the returns of a single quarter* that where the new policy of the statute of 1864 did not otherwise indicate, that *unit* was to be understood. That "new policy" covered *ordinary cases*. *Special cases* were not to be ruled by the *periods* mentioned in the preceding section. The word "oftener" liberated them from that; and so, having *otherwise* regard to the "basis of the preceding section," the period which was to create that basis, as well as that for which the readjustment was to last, *were left as before the statute*. Only, by the closing part of section 2, such readjustments and changes were not to take effect during the quarter of the returns which suggested it, but during the next quarter.

This observation as to the powers of the Postmaster General over the increase and decrease of the compensation in question is important to the present case only as *throwing some light* upon the contention of the relator. For it seems that even under the act of 1864 it was contemplated that

probably it would be right to allow some *play* to the new *biennial* policy therein incorporated—such *allowance* to be administered in the judgment of the Postmaster General. In other words, the biennial policy was a fixed one for only ordinary cases.

But the act of 1866 (June 12th) added a proviso to section 2 of the act of 1864. Obeying, therefore, the direction of the first-named act, and reconstructing "section 2" accordingly, it will read as follows:

"That the Postmaster General shall review once in two years (and in special cases, upon satisfactory representations, as much oftener as he may deem expedient) and readjust, upon the basis of the preceding section, the salary assigned by him to any office. But any change made in such salary shall not take effect until the first day of the quarter next following such order, and all orders made assigning or changing salaries shall be made in writing and recorded in his journal, and certified to the auditor for the Post Office Department: *Provided*, That where the quarterly returns of any postmaster of the third, fourth, or fifth class show that the salary allowed is ten per centum less than it would be on the basis of commissions under the act of 1854 fixing compensation, then the Postmaster General shall review and readjust under the provisions of said section."

It has already been admitted above that *the body* of this *amended section* provides in ordinary cases for salaries *fixed for two years prospectively, and ascertained from quarterly returns for two years retrospectively;* and it has been submitted that even in that *body* "*special cases*," *with salaries fixed for shorter future periods, and ascertained by past returns for shorter periods*, were entrusted to the discretion of the Postmaster General. The *proviso* goes still further. It makes it a duty of the Postmaster General to treat certain other cases in a particular way. These cases are those of the *classes* of postmasters who receive least pay; for instance, *from* (say) $7 *per*

annum (as in the McLean case), to "less than $2,000." As to such, if their "quarterly returns" "show that the "salary allowed" is ten per centum less than it would be on the basis of commissions under the act of 1854," there is to be a "readjustment under the provisions of said section."

The first remark hereupon is that the cases in this *proviso might* previously have been remedied by the Postmaster General under the body of the section, as in the act of 1864, if he had thought that a ten per cent. increase of compensation for the worst paid of his "*deputies*," made a "*special case.*" It seems certain that his power so to decide, and, as well, the propriety of the decision if made, could not reasonably have been questioned.

The proviso, therefore, gives relief to persons who were already included in a possible relief which might have occurred "*oftener*" than biennially, in the discretion of the Postmaster General. This *new relief*, however, is given *absolutely.*

Is it in any other material respect *less* beneficial than the above possible relief? Does the proviso, for instance, mean that the cases therein enumerated, although no longer to be within the discretionary power of the Postmaster General, shall, however, thenceforth be, like all ordinary cases, remediable only by the lights of the returns made *during two years previously?*

Such has been its administration in the Post Office Department, even under the additional light given by the act of 1883.

An elaborate opinion, amongst the exhibits to the answer, goes still further, and advises the Postmaster General that its meaning is that the general biennial readjustment provided by the act of 1864 for all classes of postmasters, and allowing them increase of 5, 6, 7, and other per cent. less than 10, if such increase were indicated by their quarterly returns for two years before, was thereafter quarterly to be restricted to only the *better paid classes*; the worse paid being

intended by the proviso to receive an increase *only when this would amount to* 10 *per centum.*

It may surely be assumed that the *representatives* of the people, many of whom, at least, know so well the advantage to their humble constituents of small increases of small incomes, and how *pathetic* even are the items of domestic economy which such increase may serve, had committed no such mistake.

It is submitted that the solution just mentioned of the supposed difficulties of these statutes is one which does not recommend the discussion which led thereto, and that this advice, and the *discussion* as well which led to it, cannot be supported by even the distinguished name which is thereto subscribed.

Amongst other things the writer seems to forget that if the *proviso* excepts the classes therein named from the effects of the ordinary provisions for *biennial* readjustment, it will follow that Congress has nowhere made provisions for readjustment as to these classes where their quarterly returns suggests a *decrease* of prospective salary; none, at all events, unless so far they remain within the *discretion* of the "special cases" clause!

But to resume consideration of the words of the amended section:

The source of the information as to the "ten per centum" is to be the "quarterly returns."

It is said in the opinion just cited that this phrase *being in the plural* shows that the adjustment could not be made upon information given by one "quarterly return."

If there were no context to that PLURAL phrase it might safely be submitted that in legislation and in ordinary use it is as often employed as the singular, and interchangeably therewith to signify wherever such return (as here) includes various subjects.

Exhibit C (p. 41), which is an abstract of returns made at various times by the relator, &c., shows that postmasters are required to include therein six or seven different subjects.

But the context shows that the phrase "quarterly returns" in the proviso means *one return.* For "these quarterly returns" are to show something "*on the basis of commissions under the act of* 1854." The "quarterly returns" "which showed anything as to commissions under that act, were those of *each quarter* taken alone! Each quarter, and that only, showed what the pay of each quarter would be. The *rate* of commissions established by that act showed nothing as to salary or compensation except when *multiplied into some separate quarterly return.* Therefore, "quarterly returns" here means, as often it does in all connections, *some one quarterly return.*

It may also be added, apropos of a suggestion to the contrary in the same opinion, that the phrase "*salary allowed,*" is one usual in *each quarterly return* (Exhibits C and E), the postmaster being required by departmental regulations to state that item in such return. So that in this connection it commonly means salary or compensation *for the quarter,* and not *annually.*

We submit, therefore, that the act of 1866 intended to except the holders of the smaller post offices absolutely from the ordinary *biennial* provision whenever the increase of compensation suggested by their returns indicated that if the act of 1854 alone were in force there would be a substantial addition to their income; such addition by another provision to be only *prospective.*

And looking at the state of the country, which shows (*as very remarkably in the present case*) *that any considerable increase of compensation under the rates of commission given by the statutes in force, would generally be due, under the effect of the natural expansion of the country, to the smaller offices, Congress probably thought it unjust to a class of plain and worthy citizens that the large increase of labor which by the growth of such States as Kansas would be thrown upon them during this two years' period should tend only to swell the compensation of some successor,—the overworked and underpaid officer being meanwhile compelled, in self-defense, to resign.*

Such were the *exceptions* ("offsets") which an experience of two years suggested as proper to the general policy (*which still in most cases would remain in force*) of biennial ascertainments of salary.

The provisions of the acts of 1883 enforce the above general conclusions.

Laying aside certain modifications therein of the acts of 1864 and 1866 which are not material here, it repeats the language of the act of 1866 above commented upon, and proceeds as follows:

"Such readjustments to be made in accordance with the mode presented in section 8 of the act of June 12th, 1866, *and to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business, or quarterly returns, were made.*"

We have here a congressional *affirmation* of the meaning, which, as above submitted, the phrase "quarterly returns" has in the act of 1866. For, as above quoted, *it provides expressly* that the "*quarterly returns*" upon which the readjustment is to be made are returns *of some one quarter*—"THAT," to wit, "*in which such*," &c., &c.

Upon the whole, it is submitted that at the time when McLean accepted, and during the time that he served, the office at *Florence*, the law provided, as regards the compensation of postmasters:

1. *As a general rule*, there should be a readjustment, for either increase or decrease, just before July 1, 1872, for the two years then to begin, based upon the quarterly returns of the two years preceding.

2. As a particular rule for postmasters of the third, fourth, and fifth classes—that whenever the returns of any quarter showed that their pay during that quarter had been

10 per cent. less than if they had received commissions under the act of 1854, there should be a readjustment for *increase* as if under that act, the result to take effect at the beginning of the quarter succeeding.

3. In other special cases there might be readjustments for increase or decrease, under the light of one or more returns, if the Postmaster General should choose.

In any case the 10 *per cent. increase given would not necessarily last beyond the succeeding quarter. Whether it did so would depend upon the commissions indicated by such succeeding quarters as regards the next succeeding.* If there were no indication maintaining that increase, then the Postmaster General could, in his discretion, diminish it. The previous exceptional increase would make the case, as it appeared under any next *adverse* returns, "special." In the mean time, as the rule for the country at large, was *increase* of population and business, not *decrease*, it was necessary for Congress to make absolute provision for the former; and the *exceptional* instances of *decrease* might well be left, in the rare instances when it would occur, to the discretion of the Postmaster General. *These* might well have been contemplated as some of the "*special cases.*"

The material result of the above argument to the petitioner, is that he is entitled, upon the business admitted (p. 54) to have been done by him, to the items of increase as indicated by his returns for the *first four* of the quarters of his term, the increase of the *fifth* quarter going over, "prospectively," to the credit of his successor in office. This would allow him $525.07; and he would *now* be entitled, after deducting the $8.48 already received, to $516.59.

We will now consider whether the respondent is at present liable to be controlled in such a case by mandamus; and, if

so, whether the relator has made a sufficient "application" and demand, to authorize the issuing of such writ.

Upon the first point, it is submitted that the duty devolved by the statutes in question is merely *ministerial.*

Congress has expressed its will that the class to which the relator belongs shall, under a certain state of facts, be entitled absolutely to certain action by the Postmaster General. If that action were the payment of, or a warrant for, a salary there could be no doubt. If it be, as here, an arithmetical calculation upon specified figures, as a necessary preliminary to the ascertainment of a salary, it is the same. The case is the ordinary one in which a great officer who in general cannot be coerced by the courts, has entrusted to him a duty, somewhat minute in detail, but important in the aggregate, and dignified because year after year it concerns afresh the private property of many thousand citizens; *salary promised previously to taking office, and then duly earned, being plainly such "property."*

The answer of the Postmaster General recites the decision and opinion in McLean's case (95 U. S., 750), where it avers that the court held that the relator had already received all the salary due to him from the United States. All that was there decided was that his salary, *as far as ascertained,* and therefore *as far as enforceable in the Court of Claims,* had already been paid. It was not decided that if the Postmaster General had performed his duty of adjustment it would not have appeared to the Court of Claims that more was due. The salary now claimed is first to be ascertained by action in an Executive Department, and that "action" is the only step now sought. In a suit for mandamus a court may well see, as matter of law, that a certain "salary" is due, when it could not do so in a suit brought to *recover* such "salary." The language in 95 U. S. is in accordance with the purposes of that suit, and has no bearing here, to the effect suggested in the answer.

Nor, of course, as this is no suit for money, is the existence of a suitable *appropriation* an important preliminary to jurisdiction, as the answer suggests. All that is here demanded is, *a readjustment as defined by law.*

Neither is the fact that a predecessor of the respondent had decided not to give the petitioner the benefit of the laws of the land any reason why the respondent may not, in a case otherwise fit, be required so to do. It may be fit, for reasons of uniformity of administration, that the great Departments should not be blown about by every wind of doctrine arising from the usual frequent change of persons at the head of such Departments. But this rule does not obstruct the application of *the law* whenever the courts are appealed to. There is no ground for fear of too much *change* from this circumstance.

Indeed, if it were a rule of *law* and not merely of *administration* that succeeding heads of Department are bound by the decisions of their predecessors, the result for cases like the present would be that such successors would of course have attributed to them as matter of law *a refusal*,—wherever their predecessors had *refused;* and so in the end *mandamus might be brought against such successors without fresh demand.* This is contrary to the well-established principles which govern such cases. See *Boutwell's case*, 17 Wall., p. 608, near top, where the Court, in considering the suggestion that a demand and refusal in the time of a *preceding* Secretary ought to be regarded as effective for the purposes of *mandamus* upon his *successor*, adds to other objections the following: "*Besides, were a demand made upon him he might discharge the duty, and render the interposition of the court unnecessary.*" See also Carrick *vs.* Lamar, 115 U. S., p. 425, near bottom.

The distinguished gentleman who at present is Postmaster General is the first one since the decision of 1883 who has enjoyed, or, indeed, at any time seemed likely to enjoy, a term of office sufficient in point of duration to warrant a prudent

conclusion that it would outlast that of ordinary proceedings in an application for *mandamus*. Judge Gresham remained in office for only fourteen days after the decision upon *McLean's* application (p. 46). His successor, Mr. Hatton, came in upon October 14, 1884, towards the close of an administration, and so was in office for only four and a half months. If *mandamus* can ever be successfully brought under legislation as at present, against the head of a Department, it must be against one who begins with an incoming administration. At all events, the contrary will be a very exceptional case.

Another question arising under this topic, is as to the effect of the act of 1886, ch. 903.

It is important to consider this statute, only, of course, upon the supposition that *but for its existence* the relator has a good cause of action, upon the statutes of 1864, 1866, and 1883, all or part.

The question, therefore, now is as to the effect of the act of 1886 upon claims of the sort that McLean had, supposing the same to have been valid at the time of its passage.

That act, referring to the statutes of 1883, 1866, and 1864 and to certain readjustments thereunder that had already been made, enacts—

1. An *approval* of such readjustments as being *correct*, and as *final* between the parties thereto and the Government.

2. A *disallowance* and *bar* of all claims in excess thereof and of all other claims that had been declared by proper officers of the Post Office Department not entitled to readjustment under such rule of administration.

3. That no claim for review should thereafter be considered unless presented before January 1, 1887.

4. That the method above *approved* should be thereafter pursued, and all others prohibited.

5. That no suit should be maintainable in any court against any officer of the United States, by reason of his action in reviewing or refusing to review any application for readjustment.

In considering a statute such as the above, courts carry as far as may be an intendment that it does not propose to interfere with operations of *the judicial power*, it being of course only that sort of power which can decide *in invitum* upon the meaning of any *existing contract*, including therein such contemporary remedial statutes as by constitutional principles make part of it.

It is submitted, therefore, that the statute of 1886 does not mean that upon any application *to a court* which at the time of the enactment of the statute of 1866 was a due constitutional method for procuring a declaration of its meaning, that court should be bound by the interpretation therein given to the act of 1866; but only that in the absence of such a judicial declaration, and to quiet whatever apprehensions the officers engaged in administering the statute might have, either of public or private responsibility, Congress would adopt their construction for the future as well as past, and would give them whatever advantage there might be in a statutory declaration of personal immunity from any existing liability in that connection to private suit. The general words "disallow," "bar," &c., constitute a provisional, *ad interim*, rule as to the meaning of a contract, given by the *legislature* to the *executive* until the *judiciary* could be heard from. Incidentally, thereby, the defendant would be rid of the importunities of such applicants as denied the propriety of its rule of action, and these would be referred *to the courts* for any final determination that might be desired.

By general law the United States acknowledges complete liability upon its contracts as the same by judicial methods of interpretation may be defined—it repudiates neither its obligations, nor its liability to ordinary remedies thereupon.

The above special statute, therefore, will not be construed as a departure from this wise policy. It does not forbid remedies otherwise competent against the United States upon the claims in question, and amongst these remedies are to be reckoned those brought *really* against them, but *formally* against some one of their officers.

Upon the whole it is submitted that *the context* to the statute of 1886, furnished by the Constitution and the statutes which allow of suits against the United States upon their contracts, is quite as strong as that relied upon in the long train of decisions ending with Rosenbaum's case, 120 U. S., 450, to show that the word "suit" therein does not include the "writ" of mandamus, and more particularly that the expression *suit against an officer of the United States* therein contained does not include *a writ sued out against him as matter of form, in the course of an attempt to obtain money from the United States only.*

The question remains, Whether a proper *demand* has been made upon the respondent?

The act of 1883, in order to bring the postmasters in question into direct communication with the Department, required that they should *personally* make written *application*, signed by them, and stating their residence, and that if anything were allowed it should be sent directly to them. It appears by the record (Exhibit G, folio 66; see *Petition*, folio 15; *Answer*, folio 27, and *Admissions*, folio 94) that upon the 14th of April, 1883, the relator made such *application*. That application has remained upon file ever since, official attention having from time to time been called thereto by the applicant's attorney, whose power to represent him in this general matter has been on file since 1872, folio 63.

It is submitted that the statute required but one such "application," and that when filed this authorized any subsequent action under that statute which otherwise by law

was competent,—amongst other things, such *demand* by attorney upon any succeeding Postmaster General to proceed, &c., as, being refused, would, in a case otherwise fit, warrant a mandamus.

As for a demand, it is to be remarked that the general administration of such claims which has prevailed in the Department before and also equally during the incumbency of the respondent, might almost have dispensed with any necessity of a demand. (Tacey *vs.* Irwin, 18 Wall., 549.) The answer makes no point upon the absence of a *demand*, although it suggests (folio 29), that the only "application" was to a preceding Postmaster General. For the rest, it defends the respondent's refusal to readjust as asked (1) by the rule thereupon derivable from the statute of 1864, &c. (2); by the decision of Mr. Gresham; and (3) by the act of 1886, passed upon the day that the petition in this case was filed.

However, the petition alleges (folio 15) *a refusal* by the respondent, and this is not denied in the answer. Besides, it is *admitted* (p. 54, "8") that the demand contained in the letter of March 30, 1886, had been made, and that no action was taken thereupon during the four months which elapsed until this petition for a mandamus was filed, such inaction being explained by the answer (folios 28, 29) to the effect that as the only demand made upon the respondent by the relator was one based upon an "application" filed before a preceding Postmaster General, and asking that the decision of the latter should be reviewed and overruled, whereas the respondent held it to be no duty of his so to review and overrule.

Upon the whole it is, therefore, submitted that—

1. *That the ministerial duty imposed upon the Postmaster General by the statutes of* 1864, 1866, *and* 1883 *required readjustment for cases like that of the relator from one quarter to an-*

other, each readjustment to be upon the basis of the quarter preceding, and to take effect for the quarter following.

2. *That a demand and refusal of such readjustment appear upon the record.*

3. *That the act of* 1886 *is without effect upon this case.*

H. SPALDING, *Attorney.*

S. F. PHILLIPS, *Of Counsel.*

APPENDIX.

[It is familiar matter that from the beginning of the Government down to the year 1854 postmasters were paid by commissions allowed by the Postmaster General from quarter to quarter upon their quarterly returns of money received for postage, &c., the language thereabout in the various acts being substantially that contained in the act of 1854 below. These officers were also until 1836 all appointed by the Postmaster General; and then (see Ch. 270) the appointment of all whose annual compensation was $1,000 or more was conferred upon the President, and so this has remained until now.

Therefore naturally, at first, postmasters were designated *deputies*, their relation to their chief as regards appointment, tenure, and pay being like that of the common deputy sheriff.

The act of 1792, Ch. 7 (1 Stat., 232), arranged the compensation of postmasters into *three* grades. By the *consolidating* act of 1825, Ch. 64 (4 Stat., 106), these were increased to *four*.]

The statute of 1854 and other subsequent statutes important in this connection, and referred to in the preceding argument, are as follows:

1. Statute of 1854, ch. 61 (June 22d; 10 Stat., 298).

That in place of the compensation now allowed deputy postmasters the Postmaster General be, and he is hereby, authorized to allow them commissions at the following rates on the postage collected at their respective offices in each quarter of the year, and in due proportion for any period less than a quarter, viz:

On any sum not exceeding one hundred dollars, sixty per

cent.; but any postmaster at whose office the mail is to arrive regularly between the hours of nine o'clock at night and five o'clock in the morning may be allowed seventy per cent. upon the first hundred dollars.

On any sum over and above one hundred dollars, and not exceeding four hundred dollars, fifty per cent.

On any sum over and above four hundred dollars, but not exceeding twenty-four hundred dollars, forty per cent.

And in all sums over twenty-four hundred dollars fifteen per cent.

[The rest irrelevant here.]

2. Statute of 1864, ch. 197 (July 1st; 13 Stat., 335).

SECTION 1. That the annual compensation of postmasters shall be at a fixed salary in lieu of commissions, to be divided into *five* classes, exclusive of the postmaster of the city of New York.

Postmasters of the *first* class shall receive not more than four thousand dollars nor less than three thousand dollars.

Postmasters of the *second* class shall receive less than three thousand dollars and not less than two thousand dollars.

Postmasters of the *third* class shall receive less than two thousand dollars and not less than one thousand dollars.

Postmasters of the *fourth* class shall receive less than one thousand dollars and not less than one hundred dollars.

Postmasters of the *fifth* class shall receive less than one hundred dollars.

The compensation of the postmaster of New York shall be six thousand dollars per annum, to take effect on the first day of July, eighteen hundred and sixty-four; and the compensation of postmasters of the several classes aforesaid shall be established by the Postmaster General under the rules hereinafter provided.

Whenever the compensation of postmasters of the several offices (except the office of New York) for the two consecutive years next preceding the first day of July, eighteen hundred and sixty-four, shall have amounted to an average annual sum not less than three thousand dollars, such offices shall be assigned to the *first* class; whenever it shall have amounted to less than three thousand dollars, but not less than two thousand dollars, such offices shall be assigned to the *second* class; whenever it shall have amounted to less than two

thousand dollars, but not less than one thousand dollars, such offices shall be assigned to the *third* class; whenever it shall have amounted to less than one thousand dollars, but not less than one hundred dollars, such offices shall be assigned to the *fourth* class, and whenever it shall have amounted to less than one hundred dollars, such offices shall be assigned to the *fifth* class.

To offices of the *first*, *second*, and *third* classes shall be severally assigned *salaries in even hundreds of dollars*, as nearly as practicable, in amount the same as, but not exceeding, the average compensation of the postmasters thereof for the two years next preceding; and to offices of the *fourth* class shall be assigned severally *salaries in even tens of dollars*, as nearly as practicable, in amount the same as, but not exceeding, such average compensation for the two years next preceding; and to offices of the *fifth* class shall be severally assigned *salaries in even dollars*, as nearly as practicable, in amount the same as, but not exceeding, such average compensation for the two years next preceding.

Whenever returns showing the average of annual compensation of postmasters for the two years next preceding the first day of July, eighteen hundred and sixty-four, shall not have been received at the Post Office Department at the time of adjustment the same may be estimated by the Postmaster General for the purpose of adjusting the salaries of postmasters herein provided for.

And it shall be the duty of the Auditor of the Treasury for the Post Office Department to obtain from postmasters their quarterly accounts, with the vouchers necessary to a correct adjustment thereof, and to report to the Postmaster General all failures of postmasters to render such returns within a proper period after the close of each quarter.

SEC. 2. That the Postmaster General shall review once in two years (and in special cases, upon satisfactory representation, as much oftener as he may deem expedient) and readjust, on the basis of the preceding section, the salary assigned by him to any office.

But any change made in such salary shall not take effect until the first day of the quarter next following such order, and all orders made assigning or changing salaries shall be made in writing and recorded in his journal and certified to the Auditor for the Post Office Department.

SEC. 3. That salaries of the first, second, and third classes

shall be adjusted to take effect on the first day of July, eighteen hundred and sixty-four, and of the fourth and fifth classes at the same time or at the commencement of a quarter as early as practicable thereafter.

SEC. 4. That at offices which have not been established for two years prior to the first of July, eighteen hundred and sixty-four, the salary may be adjusted upon a satisfactory return by the postmaster of the receipts, expenditures, and business of his office.

[The rest irrelevant here.]

3. Statute of 1866, ch. 114 (June 12th; 14 Stat., 59): "*An Act to Amend the Postal Laws.*"

SEC. 8. That section two of the act entitled "An act to establish salaries for postmasters and for other purposes," approved July one, eighteen hundred and sixty-four, be amended by adding the following:

Provided, That when the quarterly returns of any postmaster of the *third, fourth, or fifth class* show that the salary allowed is ten per centum less than it would be on the basis of commissions under the act of eighteen hundred and fifty-four fixing compensation, then the Postmaster General shall review and readjust under the provisions of said section.

[The rest irrelevant here.]

4. Statute of 1883, ch. 119 (March 3d; 22 Stat., —.)

That the Postmaster General be, and he is hereby, authorized and directed to readjust the salaries of all postmasters and late postmasters of the *third*, *fourth*, and *fifth* classes, under the classification provided for in the act of July first, eighteen hundred and sixty-four (where salaries have not heretofore been readjusted under the terms of section eight of the act of June twelfth, eighteen hundred and eighty-six), *who made sworn returns* of receipts and business for readjustment of salary to the Postmaster General, the First Assistant Postmaster General, or the Third Assistant Postmaster General, or *who made quarterly returns* in conformity to the then existing laws and regulations, *showing that the salary allowed was ten per centum less than it would have been* upon the basis of commissions under the act of 1854.

Such readjustments to be made in accordance with the mode presented in section eight of the act of June twelfth, eighteen hundred and sixty-six, and to date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business, or quarterly returns, were made:

Provided, That every readjustment of salary under this act should be upon a written application signed by the postmaster or late postmaster, or legal representative, entitled to said readjustment, and that each payment made shall be by warrant or check on the Treasurer or some assistant treasurer of the United States, made payable to the order of said applicant and forwarded by mail to him at the post office within whose delivery he resides, and whose address shall be set forth in the application above provided.

[By the consolidating statute of 1872, ch. 335, June 8th (17 Stat., 283), the provisions for readjusting salaries that were in force during almost all of *McLean's* term were, so far as here relevant, substantially retained except that the deficiency which was required was 20, instead of 10, per cent. Sec. 82 thereof is as follows:

"That the salaries of postmasters shall be readjusted by the Postmaster General once in two years, and in special cases as much oftener as he may deem expedient; and when the quarterly returns of any postmaster of the third, fourth or fifth class show that the salary allowed is twenty per-centum less than it would be on the basis of commission, the Postmaster General shall readjust the same."

The act of 1874, ch. 456 (18 Stat., 231), entirely changed the provisions of readjustment, and the provision now in question was dropped. See sections upon pp. 234 and 235.]

5. Statute of 1886, ch. 903 (Aug. 4; 24 Stat. 307).

SEC. 8. For compensation of postmasters readjusted because of the act of March third, eighteen hundred and eighty-three, and to pay the several amounts reported by the Auditor of the Treasury for the Post Office Department as due and unpaid, payable from deficiency in the postal

revenue for eighteen hundred and eighty-three and prior years, three hundred and eighty thousand two hundred and nine dollars and forty-six cents:

Provided, That the method of reviewing and readjusting the salaries of postmasters and late postmasters of the third, fourth, and fifth classes (under the classification of the act of July first, eighteen hundred and sixty-four), during the period between July first, eighteen hundred and sixty-four, and July first, eighteen hundred and seventy-four, which has been practiced in the Post Office Department under and since the act of March third, eighteen hundred and eighty-three (entitled "An act authorizing and directing the Postmaster General to readjust the salaries of certain postmasters in accordance with the provision of section eight of the act of June twelfth, eighteen hundred and sixty-six,") by which all such reviews and readjustments have been made prospectively for the biennial periods provided for in the said act of July first, eighteen hundred and sixty-four, upon the basis of the quarterly returns of postmasters during the preceding biennial periods, respectively, whenever the salary actually paid was ten per centum less in amount than such salary should have been if adjusted correctly upon such returns by computing what the commissions upon the same would have been under the act of June twenty-second, eighteen hundred and fifty-four, and averaging the amount thereof annually, as directed by the act of July first, eighteen hundred and sixty-four, for fixing salaries, is approved and ratified as a correct administration of the aforesaid act of March third, eighteen hundred and eighty-three, and of all other acts applicable thereto; and that the several readjustments which have been made are ratified as a correct disposition of the several claims which have been considered and disposed of, and for which this appropriation is made; and the several persons to whom amounts have been respectively found due are declared the rightful persons entitled to the same, and such amounts to be the full sums due upon any and all such claims.

And that all claims in excess thereof, and all other claims for readjustment which have been examined and found by the proper officers of the Post-Office Department not entitled to readjustment within such rule of administration, are disallowed and barred.

That no claim for review or readjustment of any such salary shall be hereafter considered unless the same shall be presented to the Post-Office Department before the first day of January, eighteen hundred and eighty-seven.

And that in considering all claims not readjusted the same method shall be pursued which is hereby approved.

And any and every different method of readjustment of salaries of such postmasters and late postmasters during the period between July first, eighteen hundred and sixty-four, and July first, eighteen hundred and seventy-four, than is herein approved, is hereby prohibited.

And no action or suit shall be maintainable in any court against any officer of the United States by reason of his action in reviewing or refusing to review, or allowing or disallowing, any application for readjustment of any such salary.

And provided further, That payment of all sums hereby appropriated shall be made by warrants or checks, as provided by the said act of March third, eighteen hundred and eighty-three, payable to the order of and transmitted to the persons entitled respectively thereto.

124-86

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, UPON THE RELATION of J. K. McLean, plaintiff in error,
vs.
WILLIAM F. VILAS, POSTMASTER-GENERAL. } No. 1041.

BRIEF OF DEFENDANT IN ERROR.

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vs.
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BRIEF OF DEFENDANT IN ERROR.

I.

The relator is not entitled to the writ of mandamus:

1. Because the writ can issue against the head of the Department only to compel the performance of a simple ministerial duty, involving the exercise of no discretion, the weighing of no evidence, the determination in a quasi judicial capacity of no difficult matters of law or the finding of no disputed or complicated matters of fact.

On this narrow ground alone the right of the former circuit court of this District to send its writ in such a case was held to rest. (*Kendall* vs. *United States*, 12 Pet., 524.)

In that case the act sought was merely the allowance on account of a credit which had been conclusively adjusted and settled by another officer, who had acted under authority of an act of Congress. The Postmaster-Gen-

eral was entirely without discretion, having no other act to perform than merely to enter the credit in the account of the relator; as was said by Mr. Justice Catron in *Decatur* v. *Paulding*, 14 Pet., 521.

Mr. Chief Justice Taney, in the case last cited, draws the distinction between merely ministerial duties and those involving the exercise of judgment and discretion. He says at page 515:

> In general, such duties, whether imposed by act of Congress or by resolution, are not mere ministerial duties. The head of an Executive Department of the Government, in the administration of the various and important concerns of his office, is continually required to exercise judgment and discretion. He must exercise his judgment in expounding the laws and resolutions of Congress under which he is from time to time required to act. If he doubts, he has a right to call on the Attorney-General to assist him with his counsel; and it would be difficult to imagine why a legal adviser was provided by law for the heads of Departments, unless their duties were regarded as executive, in which judgment and discretion were to be exercised. * * *
>
> The court could not entertain an appeal from the decision of one of the Secretaries, nor revise his judgment in any case where the law authorized him to exercise discretion or judgment. Nor can it by mandamus act directly upon the officer and guide and control his judgment or discretion in the matters committed to his care in the discharge of his official duties.

In *United States* v. *Guthrie*, 17 Howard, 302, it is said:

> Thus it has been ruled, that the only acts to which the power of the courts by mandamus extends are

> such as are purely ministerial, and with regard to which nothing like judgment or discretion in the performance of his duties is left to the officer, but that whenever the right of judgment or decision exists in him, it is he, and not the courts, who can regulate its exercise.

Following this rule with clear discrimination, the court below has refused all applications for mandamus where the object sought was to constrain executive action not merely and clearly of a ministerial character. (*Hall* v. *The Commissioner of Patents*, 2 MacArthur, 139; *Ex rel. Bigelow*, 2 MacArthur, 24.)

In the case at bar the Postmaster-General is not only to consider and determine the interpretation of sundry statutes, difficult of construction, to ascertain their meaning, but he must determine the fact whether quarterly returns are made such as the law requires, whether they are sufficient, whether they show the facts required to be set forth in them, and whether they are true. All this is not ministerial duty; it involves judgment and discretion; the exercise of that power, judicial in its nature and practical operation, which executive officers, especially those at the heads of Departments or Bureaus are required almost constantly to exercise. (*United States* v. *Commissioner*, 5 Wall., 563; *Secretary* v. *McGarraghan*, 9 Wall., 312.)

The court below has expressly decided in another case that the readjustment of a salary, the very act sought to be constrained here, is not a ministerial duty. It held as follows:

> The statutes have assigned certain duties to the Postmaster-General for the purpose of regulating the

> salaries of postmasters. He is to ascertain the revenues of each at intervals of two years or oftener, according to his own judgment, and upon a statement of facts to be furnished under oath of the postmaster, and this is called a readjustment. *This cannot be regarded as a mere ministerial function.* He is called upon before coming to a conclusion to examine details to criticise the material upon which he is to act, and to pronounce a result after surveying the whole, including the interests of the Government and the rights of the officer, which are involved. *It is a delicate and important duty, and implies* a much higher exercise of discretion than the mere ministerial duty of computing figures. (*United States* v. *Key*, 3 MacArthur, 328.)

This duty, in a case involving examination of evidence, peculiar findings of fact, a highly judicial finding as to the sufficiency of returns, the interpretation of obscure statutes of doubtful meaning, and even an overruling of the findings of this court in the former action between the same party and the United States (*McLean* vs. *The United States*, 95 U.S.R., 720), is what the court is asked to enforce and control by the issuance of a mandamus in this case. (See also *U. S. ex rel.* v. *Key*, 3 MacArthur, 337.)

(2) The courts will not send this writ to compel the head of a Department to revise and overrule the judgment and action of his predecessor, even if that action and judgment be erroneous. (*United States ex rel.* vs. *Chandler, Secretary of the Navy*, 2 Mackey, 527.)

In this case, as the record shows, the claims of this relator had been considered and decided, and nothing determined to be due him by one of the predecessors of the present Postmaster-General under the act of 1883.

The rule is settled by a long series of judicial decisions and authoritative opinions, that when a claim has once been considered, and final action taken by one head of a Department, his successor in office can not open, revise, reconsider, or allow the same claim or reverse the former action taken thereon. (*United States* v. *Bank of the Metropolis*, 15 Pet., 401; Attorney-General Toucey, 5 Op. Att'y Gen., 29; Attorney-General Johnson, 5 Op., 240; Attorney-General Black, 9 Op., 300 and 387; Attorney-General Stansbery, 12 Op., 169, 356; Attorney-General Hoar, 13 Op., 33 and 226; Attorney-General Akerman, 13 Op., 387; Attorney-General Bristow, 13 Op., 457; Attorney-General Williams, 14 Op., 275. See also *Illinois* v. *The United States*, 20 C. Cls. R., 342; *Frederick* v. *Jackson*, 19 C. Cls. R., 505; *Stone* v. *The United States*, 2 Wall., 535.)

In the case at bar the claim had been readjusted and nothing found and determined to be due during the term of a predecessor. In the usual course of procedure the claim had been passed and so disposed of. (Rec., p. 9, folios 27, 28, pp. 46 and 47.) The other claims from the same State had been considered, and such as were found entitled to more than had formerly been received were reported to the Secretary of the Treasury, to be provided for by an act of Congress appropriating money for their payment. (Rec., p. 9, f. 27 and 28.) This claim had been disallowed—in other words, it had been considered,

and according to the rules and procedure the interpretation of the law given, and the regular course in which such rules were applied the case was decided adversely to the claimant. To reverse the decision of a predecessor of the present Postmaster-General is what is sought to be enforced by mandamus in this action.

3. The action which the court is moved to command is precisely what Congress has forbidden. The act of 1883 commanded a readjustment of salaries in certain cases. Under that act the claim of this relator had been disallowed, according to the rule of administration then adopted and followed. Then arose the complaint that this rule of administering the law founded upon this interpretation was not the proper one—that it was not giving the claimants what they claimed or expected. To settle the matter finally, and to relieve the Department from the vexation and litigation threatened, the act of 1886 was passed.

That act—

Ratified and confirmed the action of the former Postmaster-General in determining that nothing was due McLean.

Declared the methods of review by which the former Postmaster-General reached the conclusion that nothing was allowable to McLean, the relator, the correct rule to apply in the case.

Revoked its mandate to the Postmaster-General contained in the act of June 12, 1866, and its further mandate of March 3, 1883, so far as they contravene its later direction in the act of 1886.

The only right the postmaster had under the acts of 1866 and 1883 was to have the Postmaster-General comply with the law and review his salary. But Congress

has interposed and revoked its mandate, out of which the relative right to have such action taken arose, and has forbidden any readjustment except upon the basis and rule by which McLean was declared to be not entitled to further compensation.

It is insisted by the relator that the act of August 4, 1886, is an attempt to take away his vested rights; that it summarily cuts off his rights, as given under the former laws, to have payment made to him of the sum which was once due him.

Conceding, for the sake of argument, that the construction of the law under which the Department has acted was an erroneous one, and that rightly construed and applied to this case, the relator would have been entitled to some amount in addition to that which he has received, still it is respectfully submitted that the act of 1886 is not liable to such criticism.

Congress in this act merely declares, in effect, that upon the claims found due by the Postmaster-General it will make an appropriation; that on the claims he has not found any amount due it refuses an appropriation. It merely debars them from being certified to Congress for appropriation, and directs the Postmaster-General to take no further action upon them.

The act of 1883 was an act of grace on the part of Congress. It merely directed the Postmaster-General to do what at that time he was not required to do; that is, to readjust these old salaries for certain periods in cases where the Postmaster-General who should have made the readjustment failed or refused to do so. The mandate of the act of 1883 was a mere favor to postmasters who had lost

their rights by laches—they had not brought proceedings in time, and the appropriations, out of which they might at the proper time have been paid, had long since lapsed, and the amounts which they should have received could only be paid by reappropriation. They could not sue in the Court of Claims, because a readjustment was first necessary. (*McLean* v. *United States*, 95 U. S. R., 750.)

They could not compel a readjustment by mandamus, because, as we insist, such readjustment was not a ministerial act constrainable by that writ; and the writ would not go to compel one head of a Department to open the accounts and revise and correct the erroneous decisions or allowances of his predecessors. (*United States ex rel. Warden* v. *Chandler*, 2 Mackey, 527.)

So the postmasters were remediless. They were in the same attitude of all claimants whose debts were not paid while the appropriation therefor was available. Their right was to go to Congress and there urge their claims; Congress could provide such method as it saw fit. It could adjust the amount itself or it could refer it to some officer to make the adjustment. It did pass the act of 1883. It therein directed the readjustment of these old salaries by the Postmaster-General. It made no appropriation for their payment in that act nor in the general appropriation act for that year, leaving them, when readjusted, to be treated as all old claims are treated when adjusted, allowed to be certified through the Secretary of the Treasury to Congress to be provided for by appropriation in the proper deficiency bill. The act was a mere direction to the Postmaster-General to readjust these old claims, to ascertain certain facts and results from the documents sup-

posed to be on file in his Department in order that Congress might be informed what sum it should appropriate.

It was competent for Congress, having passed this act of 1883, to repeal it, alter it, recall the mandate of it, give another, or give none. It might commit the readjustment to another officer or itself assume it. The postmaster, however just his ancient claim, could not be said to have a vested right, *a property right*, to have it adjusted by a particular officer, and that right so sacred that Congress could not affect it by forbidding that officer to act or modifying its former instructions to him. Congress might provide another method of ascertaining what was due. This statute of 1886, commanding the Postmaster-General to proceed in a certain manner in certain cases of these claims, and prohibiting him from proceeding in others, is, we submit, not open to the criticism of violating any constitutional provision or taking away any vested right.

The payment of debts of the United States to individuals is a matter entirely under the control of Congress. It can direct an officer to adjust or state an account or the amount due thereon, but no right accrues thereby which Congress can not afterwards disregard. It may revoke the authority, as it has done in this case, to allow any further sum or to reconsider any claim theretofore disallowed or passed upon, and found to be disallowable, whether such decision was right or wrong.

In *De Groot* v. *United States* (5 Wall., 419) it is held that where the head of a Department exceeds his authority, Congress may revoke the authority and make other disposition of the case.

In *Gordon* v. *United States* (7 Wall., 188) it is decided that an act of Congress referring a claim against the Government to an officer of one of the executive departments, to examine and adjust, does not, even though the claimant and the Government act under the statute, and the account is examined and adjusted, make the case one of arbitrament and award in the technical sense of these words, and hence a subsequent act repealing the one making the reference (the claim not yet being paid) impairs no right and is valid.

The court say:

> The joint resolution of June, 1860, gave the appellant a tribunal before which his claim might be investigated. The repeal of that resolution only deprived him of that tribunal. *It was competent for Congress to abolish the tribunal it created for the adjustment of the appellant's claims, or it might have committed them to some other authority.* In either event the claimant's right would not have been violated, only his remedy for the enforcement of these rights would have been taken away or changed. The power that created this tribunal could rightfully destroy it, unless some rights had accrued which were the result of the creation of such tribunal and inseparable from it. Here no such rights had resulted from the passage of this resolution. The appellant was left where that resolution found him. *His right to importune Congress for more was not at all impaired by its repeal.*

In *Chorpenning* vs. *The United States* (94 U. S. R., 397) the same rule is held, viz: that where the adjustment of a claim is referred to the Postmaster-General, and he has acted under it, Congress can repeal the act, revoke the au-

thority, or prohibit any payment from being made under such settlement, even out of an appropriation already made.

In the case at bar, the legislation of Congress in the act of 1886 is that such claims as have been adjusted and allowed it will pay; such as have been disallowed it will not pay by that method of adjustment and payment; and the right of Congress to withdraw from the Postmaster-General the consideration of these claims or any part of them, to forbid his considering them, or forbid his considering them except according to such rules as Congress might prescribe, is, under the principles of the above decisions, clear; and under the act of 1886 the Postmaster-General is prohibited from further consideration of this claim. When, after intrusting the adjustment of these old claims to an officer, Congress subsequently withdraws them or forbids further action, except upon such rules as it may prescribe, courts will not assume that Congress does not intend to provide another remedy, or leave the parties without right to seek their remedies before Congress, where all creditors must ultimately go for appropriations to pay them their dues. As was said in the Chorpenning case:

> The implication from the repeal of the resolution of 1870 (which directed the adjustment and the basis thereof) and the prohibition of the act of 1871 (which was a prohibition to pay this adjusted claim out of moneys already appropriated and available to pay it) is clear that Congress did not intend that anything more should be paid to the claimant without further authority from that body. (94 U. S., 399.)

Assuming the readjustment asked for to be a mere ministerial act, what is the ground on which the court below could by mandamus constrain the Postmaster-General to do it? Simply because Congress had commanded it. But can the court compel it, predicating its power upon the mandate of Congress, after that mandate has been revoked by Congress, and instead of a direction to do the act there has been a positive command to refrain from doing it?

4. This action of mandamus instituted by this relator is prohibited by the act of 1886. The language of the act is "and no action or suit shall be maintainable in any court against any officer of the United States by reason of his action in reviewing or refusing to review, or allowing or disallowing any application for the readjustment of any such salary." (24 Stats., 308.)

This proceeding for mandamus instituted by this relator is but an action at law.

> It is now regarded as an action by the party on whose relation it is granted. (*Kendall* vs. *Stokes*, 3 How., 100.)
>
> It is equally well settled that a mandamus in modern practice is *nothing more than an action at law* between the parties, and is not now regarded as a prerogative writ. (*Kentucky* vs. *Dennison*, 24 How., 97.)

The fact that the Postmaster-General had been threatened with a multitude of suits by some fifteen thousand disappointed applicants, doubtless moved Congress to enact this prohibition from motives of the soundest public policy—to prevent the administration of the Department from interruption by this legion of dissatisfied claimants.

It will be observed by reference to the original petition for this writ that it was filed the 4th day of August, 1886, and the order to show cause was issued August 6, 1886. The act prohibiting the institution of this action took effect, by approval, August 4, 1886, and under well settled law took effect and was in force the whole of that day. (*Matthews* v. *Lane*, 7 Wheat., 164, 211 ; *Lapeyre* v. *United States*, 17 Wall., 198 ; *United States* v. *Norton*, 97 U.S. R., 164.)

This proceeding was, therefore, instituted after it was prohibited by said act, even if it be deemed instituted at the time of filing the petition.

It is competent for Congress to pass such a law.

> It is no answer to this to say that it interferes with the validity of contracts, for no provision of the Constitution prohibits Congress from doing this, as it does the States, and where the question of the power of Congress arises * * * it does not depend upon the incidental effect of its exercise on contracts, but on the existence of the power itself.
>
> That an act passed after the event, which in effect ratifies what has been done, and declares that no suit shall be sustained against the party acting under color of authority, is valid so far as Congress could have conferred such authority before admits of no reasonable doubt. These are ordinary acts of indemnity passed by all Governments when the occasion requires it. (*Mitchell* v. *Clark*, 110 U. S. R., 633.)

II.

The foregoing has been urged on the assumption that the relator's position is correct, that Postmaster-General Gresham in his interpretation of the act of 1883 and the

preceding legislation, under the advice of Attorney-General Brewster, failed to apply the proper rule of readjustment.

It is further respectfully insisted by the Postmaster-General that the mandamus should not issue—even should the foregoing not be deemed sufficient ground for its repeal—for the reasons set forth in the opinions of Attorney-General Brewster, which are part of the record in this case, in which he painstakingly construed these several statutes and advised the Postmaster-General how to proceed in readjustment.

The Department was urged to adopt various interpretations of these statutes. Briefly stated, the different positions urged were:

1. That the effect of the acts of 1866 and 1883 was to require a review of each quarter's return and the payment of salary therefor retrospectively, on the basis of the act of 1854, when it appeared that the postmaster would be the gainer thereby by so much as 10 per cent.

This position is manifestly untenable, as under the proviso of 1866 the salaries were to be readjusted *prospectively*. The act of 1883 expressly precluded such a construction, as it required the readjustment to take effect prospectively.

This court so interpreted the law in the former action by McLean (see 96 U. S. R., 720).

2. It was contended that the acts of 1866 and 1883 required a review of the returns for each quarter, and a readjustment of the salary for the *next* quarter upon the basis of the receipts for the preceding quarter. The able reasoning of Judge Gresham while Postmaster-General and

Attorney-General Brewster in their opinions, we must rely upon to fully meet this construction of the statutes.

3. Another view urged upon the Department was that the salary of a postmaster should be readjusted whenever the returns for eight preceding quarters, irrespective of biennial periods, showed that he had received a salary which was 10 per cent. less than it would have been had it been readjusted upon the commission basis of 1854. In other words, whenever quarterly returns for eight quarters showed such result, there should be a readjustment, and the salary fixed for two succeeding years on that basis; and then when the return for the next quarter after such readjustment took effect came in, if the then eight preceding returns showed that the salary as then fixed was 10 per cent. less than the same would have been upon comparison of those last eight returns with the commission basis for the same period, then a new readjustment must be made and the salary fixed for two years on the basis shown by such retrospect of eight returns, thus maintaining, as Attorney-General Brewster remarks, "the farce of a biennial salary readjusted quarterly."

This construction, it is respectfully submitted, is not the one that best consists with the legislative intent.

4. The construction placed upon these acts by Postmaster-General Gresham, as advised by Attorney-General Brewster, was this: That the readjustments made at regular biennial periods, during the time that these acts of 1864, as amended by the act of 1866, were operative, should be reviewed, and in such review comparison should be made between the average annual compensation actually received during the preceding two years and what it

would have been had it been readjusted on the basis of commissions under the act of 1864; and if it appear that the salary actually received was 10 per cent. less than it would have been if commissions had been paid, then that the readjustment for the next biennial period, should be predicated upon the commission basis of the preceding two years. Applying that rule, it will be found that the relator in this case is entitled to no readjustment, as the Department has determined.

1. Because there are not *eight* consecutive *sworn* quarterly returns, on which to base a readjustment. It has been ruled and held, as a rule of administration in the Department at all times, under the opinion of the Attorney-General, that where eight sworn returns were not found on file no readjustment could be made under the act of 1883. In this case, as appears by the record, there were not *eight sworn* returns on file. (See p. 54, f. 93, of Rec.)

The post-office prior to the time when McLean took charge was named Doyle. Its site was changed, and its name was changed from Doyle to Florence on the 13th March, 1871. (See p. 54, f. 93, of the Rec.)

It will be seen from the record that the biennial salary for the period from July 1, 1870, to June 30, 1872—which covered the period in which the relator served—was properly fixed at $7.00. This is shown by Exhibit E, on page 43 of the record. The average annual compensation for the preceding biennial period had been $6.99, or for the two years $13.98, as shown in the exhibit. Whether the establishment of the post-office at Florence be deemed the creation of a new office or is to be deemed merely the

continuance of the office at Doyle, the result is the same. There were not eight *sworn* returns on which to base a readjustment, at any time during the period for which this claim is made. So, whether the readjustments were to be made for the regular biennial periods, or whenever intermediately eight quarterly returns showed that the postmaster had received 10 per cent. less than he would have received had the commission basis been applied, this postmaster could claim no readjustment.

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for Defendant in Error.

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O

R. F. HUMISTON. 2 Sheets—Sheet 1.

Apparatus for Burning Hydrocarbons.

No. 216,853. Patented June 24, 1879.

Fig. 1

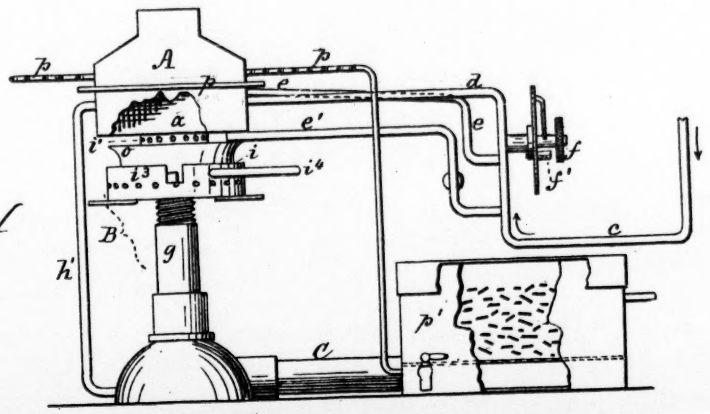

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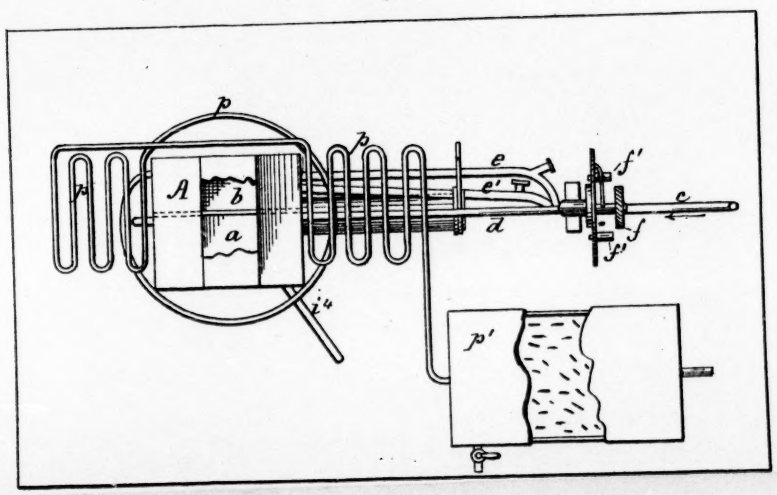
Fig. 2.



Witnesses:
Philip F. Larner
Howell Battle

Inventor:
R. F. Humiston
By Wm. McWood
Attorney.

2 Sheets—Sheet 2.

R. F. HUMISTON.

Apparatus for Burning Hydrocarbons.

No. 216,853. Patented June 24, 1879.

No. 83. Humiston & Wood & Co. } p. 85.

Fig. 3.

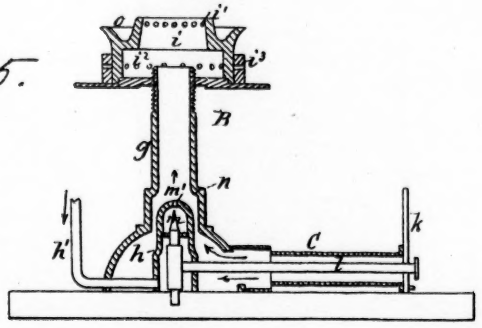


Fig. 4.

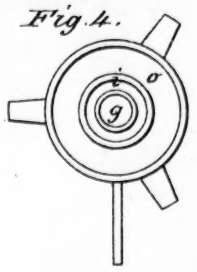


Fig. 5.

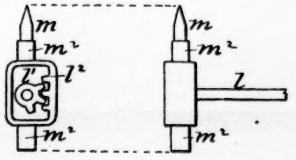


Fig. 6.

Fig. 7.

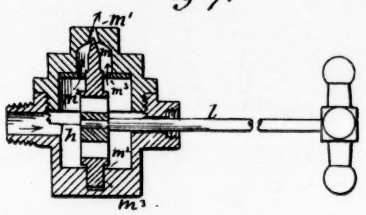
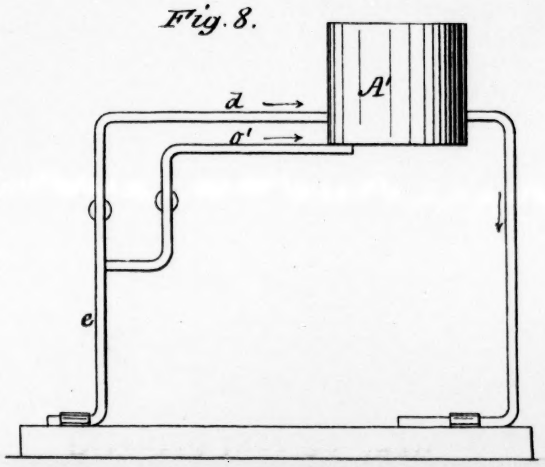


Fig. 8.

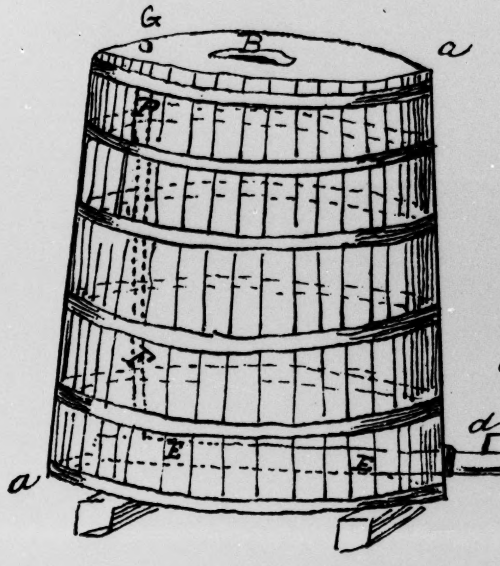


Witnesses:
Philip F. Larner.
Howell Battle

Inventor.
R. F. Humiston.
By Munn & Co.
Attorney.

No. 118.
Dreyfus et al.
v.
Searle Exrx
p. 536.

Searle
v.
Greyfus
2624.
Complainant's Exhibit B.
(Complainants Book)



aa tank
b manhole
c steam pipe
d stop cock
e e steam pipe in tank
f vent pipe
G open end of vent pipe

Endorsed:
Filed Dec. 11, 1882.
L. L. B. Sawyer, Clerk.